48/Chap.7-14/1990

code of federal regulations

Federal Acquisition Regulations System

48

CHAPTERS 7 TO 14

Revised as of October 1, 1990

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

AE2.106/3:

READEX FICHE best copy available
pages tightly bound

code of federal regulations

Federal Acquisition Regulations System

48

CHAPTERS 7 TO 14

Revised as of October 1, 1990

CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT

AS OF OCTOBER 1, 1990

With Ancillaries

Published by
the Office of the Federal Register
National Archives and Records
Administration

as a Special Edition of
the Federal Register

1985

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1990

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402

Table of Contents

Page

Explanation v

Title 48:

Chapter 7—Agency for International Development 3

Chapter 8—Department of Veterans Affairs 155

Chapter 9—Department of Energy 301

Chapter 10—Department of the Treasury 647

Chapter 12—Department of Transportation 651

Chapter 13—Department of Commerce 751

Chapter 14—Department of the Interior 795

Finding Aids:

Table of CFR Titles and Chapters 855

Alphabetical List of Agencies Appearing in the CFR 871

Distribution Table 880

List of CFR Sections Affected 887

Cite this Code: **CFR**

To cite the regulations in this volume use title, part and section number. Thus, 48 CFR 701.105 *refers to title 48, part 701, section 105.*

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16 .... as of January 1
Title 17 through Title 27 .... as of April 1
Title 28 through Title 41 .... as of July 1
Title 42 through Title 50 .... as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, October 1, 1990), consult the "List of CFR Sections Affected (LSA)," which is issued monthly, and the "Cumulative List of Parts Affected," which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

EFFECTIVE AND EXPIRATION DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request. Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

OBSOLETE PROVISIONS

Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949-1963, or 1964-1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

CFR INDEXES AND TABULAR GUIDES

A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table III). A list of CFR titles, chapters, and parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of "Title 3—The President" is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

REPUBLICATION OF MATERIAL

There are no restrictions on the republication of material appearing in the Code of Federal Regulations.

INQUIRIES AND SALES

For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, DC 20402 (telephone 202-783-3238).

MARTHA L. GIRARD,
Director,
Office of the Federal Register.

October 1, 1990.

THIS TITLE

Title 48—Federal Acquisition Regulations System is composed of seven volumes. The chapters in these volumes contain all current regulations and are arranged as follows: Chapter 1 (Parts 1 to 51), Chapter 1 (Parts 52 to 99), Chapter 2 (Parts 201 to 251), Chapter 2 (Parts 252 to 299), Chapters 3 to 6, Chapters 7 to 14 and Chapter 15 to End. The contents of these volumes represent all current regulations codified under this title of the CFR as of October 1, 1990.

The Federal acquisition regulations in Chapter 1 are those government-wide acquisition regulations jointly issued by the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration. Chapter 2 through end are acquisition regulations issued by individual government agencies. Parts 1 to 69 in each of Chapter 2 through end are reserved for agency regulations *implementing* the Federal acquisition regulations in Chapter 1 and are numerically keyed to them. Parts 70 to 99 in Chapter 2 through end contain agency regulations *supplementing* the Federal acquisition regulations.

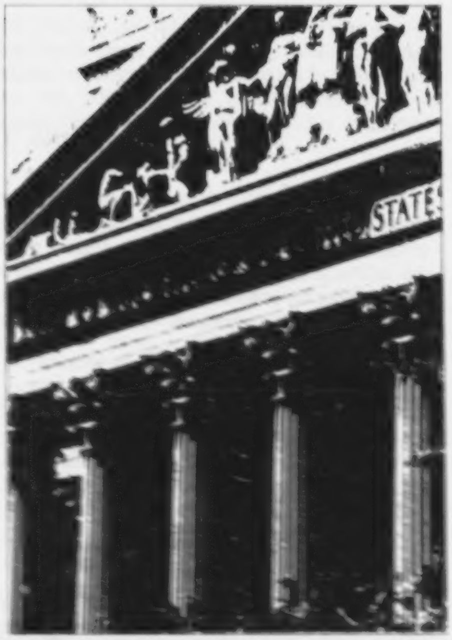
The OMB control numbers for the Federal Acquisition Regulations System appear in § 1.105 of Chapter 1. For the convenience of the user § 1.105 is reprinted in the Finding Aids section of the second volume containing Chapter 1 (Parts 52 to 99).

The two volumes containing Chapter 1 include a subject index to the Federal acquisition regulations. The second volume, containing Chapter 1 (Parts 52 to 99), includes contract clauses and forms. The volume containing Chapter 2 also contains a subject index to the Department of Defense regulations. The volume containing Chapters 7 to 14 includes a Distribution Table for Chapter 9.

For this volume Kent H. Giles was Chief Editor. The Code of Federal Regulations publication program is under the direction of Richard L. Claypoole, assisted by Alomha S. Morris.

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.



LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected.
$21.00 per year

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.
$19.00 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.

Note to FR Subscribers
FR Indexes and the LSA (List of CFR Sections Affected) are mailed automatically to regular FR subscribers.

Superintendent of Documents Subscriptions Order Form

Order Processing Code
***6483**

Charge your order. It's easy!

[illegible]

☐ **YES,** please send me the following indicated subscriptions:

☐ LSA • List of CFR Sections Affected—one year as issued—$21.00 (LCS)

☐ Federal Register Index—one year as issued—$19.00 (FRSU)

1. The total cost of my order is $______. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. ______________________________
(Company or personal name)

____
(Additional address/attention line)

____
(Street address)

____
(City, State, ZIP Code)

(______)______________________
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

____
(Credit card expiration date)

Thank you for your order!

____
(Signature)

(REV. [illegible])

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, DC 20402-9371

Title 48—Federal Acquisition Regulations System

(This book contains Chapters 7 to 14)

	Part
CHAPTER 7—Agency for International Development	701
CHAPTER 8—Department of Veterans Affairs	801
CHAPTER 9—Department of Energy	901
CHAPTER 10—Department of the Treasury	1033
CHAPTER 12—Department of Transportation	1201
CHAPTER 13—Department of Commerce	1301
CHAPTER 14—Department of the Interior	1401

CHAPTER 7—AGENCY FOR INTERNATIONAL DEVELOPMENT

SUBCHAPTER A—GENERAL

Part		Page
701	Federal Acquisition Regulation System	5
702	Definitions of words and terms	10
703	Improper business practices and personal conflicts of interest	12
704	Administrative matters	12

SUBCHAPTER B—ACQUISITION PLANNING

705	Publicizing contract actions	14
706	Competition requirements	15
707	Acquisition planning	17
708	Required sources of supplies and services	17
709	Contractor qualifications	17

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

713	Small purchase and other simplified purchase procedures	18
714	Sealed bidding	18
715	Contracting by negotiation	18
716	Types of contracts	22
717	Special contracting methods	23

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

719	Small business and small disadvantaged business concerns	24
722	Application of labor laws to government acquisition	29
724	Protection of privacy and freedom of information	32
725	Foreign acquisition	33
726	Other socioeconomic programs	34

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

728	Bonds and insurance	38
731	Contract cost principles and procedures	40

Part		*Page*
732	Contract financing	45
733	Protests, disputes, and appeals	47

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

734	Major system acquisition	51
736	Construction and architect-engineer contracts	51
737	Service contracting	53

SUBCHAPTER G—CONTRACT MANAGEMENT

742	Contract administration	57
749	Termination of contracts	57
750	Extraordinary contractual actions	58

SUBCHAPTER H—CLAUSES AND FORMS

752	Solicitation provisions and contract clauses	64
753	Forms	91

Appendices to Chapter 7

Appendix A—Respective roles of contracting and other personnel in the AID procurement process 91
Appendix B—[Reserved]
Appendix C—Logistic support overseas to AID-direct contractors 92
Appendix D—Direct AID contracts with U.S. citizens or U.S. resident aliens for personal services abroad 94
Appendix E—[Reserved]
Appendix F—Use of collaborative assistance method for Title XII activities 120
Appendix G—Approval and reporting procedures for contractor salaries 124
Appendix H—Response to audit recommendations 125
Appendix I—AID's academic publication policy 128
Appendix J—Direct AID contracts with cooperating country nationals and with third country nationals for personal services abroad 129

SUBCHAPTER A—GENERAL

PART 701—FEDERAL ACQUISITION REGULATION SYSTEM

Subpart 701.1—Purpose, Authority, Issuance

Sec.
701.105 OMB approval under the Paperwork Reduction Act.

Subpart 701.3—Agency for International Development Acquisition Regulation

701.370 Purpose.
701.371 Authority.
701.372 Applicability.
701.373 Code arrangement.
701.374 Publication.
701.375 Citation.
701.376 Agency implementation.
701.376-1 Responsibility.
701.376-2 AIDAR Notices.
701.376-3 Appendices.
701.376-4 Implementation within AID contracting activities.
701.377 Procurement policy.

Subpart 701.4—Deviations From the FAR or AIDAR

701.402 Policy.
701.470 Procedure.

Subpart 701.6—Contracting Authority and Responsibility

701.601 General.
701.602-3 Ratification of unauthorized commitments.
701.603 Selection, appointment and termination of appointment.
701.603-70 Designation of contracting officers.

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

SOURCE: 49 FR 13236, Apr. 3, 1984, unless otherwise noted.

Subpart 701.1—Purpose, Authority, Issuance

701.105 OMB approval under the Paperwork Reduction Act.

(a) The following information collections established by the AIDAR have been approved by OMB and assigned OMB control number 0412-0520 (expiration date 12/31/90):

AIDAR segment	Burden hrs. per report
733.7003(c)	40
752.209-70	4
752.219-8	1
752.245-70	1
752.245-71	1
752.7001(a)	.5
752.7001(b)	.5
752.7002(j)	1
752.7003	8
752.7004(b)(4)	.5
752.7032	2

(b) Public reporting burden for these collections of information is estimated as shown in paragraph (a) of this section. The estimated burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimates or any other aspects of these collections of information, including suggestions for reducing the burden, to:

Agency for International Development, Office of Procurement Policy, Planning & Evaluation, MS/PPE, Washington, DC 20523-1435; and

Office of Management and Budget, OMB Paperwork Reduction Project (0412-0520), Washington, DC 20503.

[55 FR 39976, Oct. 1, 1990]

EFFECTIVE DATE NOTE: At 55 FR 39976, Oct. 1, 1990 § 701.105 was revised, effective October 31, 1990. For the convenience of the user, the superseded text appears as follows:

701.105 OMB approval under the Paperwork Reduction Act.

(a) The following information collection and recordkeeping requirements established by A.I.D. have been approved by OMB, and assigned an OMB control number and approval/expiration dates as specified below:

AIDAR segment	OMB Control Number	Expiration date	Burden hours per report
733.7003(c)	0412-0520	12/31/90	40
737.270(e)	0412-0520	04/30/90	.5
752.209-70	0412-0520	04/30/90	4
752.219-8	0412-0520	04/30/90	1

AIDAR segment	OMB Control Number	Expiration date	Burden hours per report
752.245-70	0412-0520	04/30/90	.5
752.245-71	0412-0520	04/30/90	.5
752.7001(a)	0412-0520	04/30/90	8
752.7001(b)	0412-0520	04/30/90	.5
752.7002(a)	0412-0520	04/30/90	1.5
752.7002(b)	0412-0520	04/30/90	2
752.7003	0412-0520	04/30/90	8
752.7004	0412-0520	04/30/90	1
752.7016	0412-0520	04/30/90	1
752.7020	0412-0520	04/30/90	2
752.7027(a)	0412-0520	04/30/90	2.5
752.7027(b)	0412-0520	04/30/90	2.5

(b) Public reporting burden for these collections of information is estimated as shown in paragraph (a) above, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimates or any other aspects of these collections of information, including suggestions for reducing the burden, to the Agency for International Development, Washington, DC 20523, Attention: MS/PPE, Room 1600I, SA-14, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20523.

[53 FR 50630, Dec. 16, 1988, as amended at 54 FR 16122, Apr. 21, 1989; 55 FR 6802, Feb. 27, 1990]

Subpart 701.3—Agency for International Development Acquisition Regulation

701.370 Purpose.

The Agency for International Development Acquisition Regulation (AIDAR) supplements the Federal Acquisition Regulation (FAR) and implements the procurement related aspects of the Foreign Assistance Act, Executive Order 11223, and established AID policies on contracting as set forth in Supplement B to AID Handbook 1. The AIDAR provides for the codification and publication of procedures for the acquisition of services and personal property by AID.

701.371 Authority.

The AIDAR is prepared by the AID Procurement Executive by direction of the Administrator of AID pursuant to the Foreign Assistance Act of 1961. See FAR Subpart 1.3.

701.372 Applicability.

(a) Unless a deviation is specifically authorized in accordance with subpart 701.4, or unless otherwise provided, the FAR and AIDAR apply to all contracts (regardless of currency of payment, or whether funds are appropriated or non-appropriated) to which AID is a direct party.

(b) At Missions where joint administrative services are arranged, procuring offices may apply the Department of State Acquisition Regulation for all administrative and technical support contracts except in defined areas. The defined areas and administrative guidelines for procurement will be furnished to the overseas Missions by the Office of Management Operations. Administrative and local support services include the procurement accountability, maintenance and disposal of all office and residential equipment and furnishings, vehicles and expendable supplies purchased with administrative and/or technical support funds, either dollars or local currency.

[49 FR 13236, Apr. 3, 1984, as amended at 49 FR 33667, Aug. 24, 1984; 55 FR 6802, Feb. 27, 1990]

701.373 Code arrangement.

(a) The Federal Acquisition Regulation System brings together, in Title 48 of the Code of Federal Regulations, the procurement regulations that apply to all agencies of the Government. The FAR is Chapter 1 of Title 48; the AIDAR is Chapter 7.

(b) The FAR is divided into 69 parts; Parts 1 through 69 of AIDAR expand upon or modify the policies and procedures included in the FAR. Material issued in the first 69 parts of the AIDAR will be numerically keyed to the corresponding sections of the FAR.

701.374 Publication.

(a) Those parts of the AIDAR which contain basic and significant policies and procedures considered to be of interest to the general public will be published in the daily issues of the FEDERAL REGISTER and, in cumulated form, in the Code of Federal Regulations. Copies of the AIDAR in FEDERAL REGISTER and Code of Federal Regulations form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

(b) Public participation will be obtained for significant revisions to the AIDAR by soliciting comments in accordance with FAR 1.501.

701.375 Citation.

Any section of the AIDAR may be identified by "AIDAR" followed by the section number. Within the AIDAR itself, internal references to an AIDAR section will cite the number only, and will not include the term "AIDAR". Since the AIDAR is published in the FEDERAL REGISTER, any section may be incorporated into contracts by reference, using the citation "48 CFR" followed by the section number, as "48 CFR 703.375."

701.376 Agency implementation.

701.376-1 Responsibility.

Responsibility for the development and maintenance of the AIDAR is assigned to the Procurement Executive. Amendments and revisions will be prepared in coordination with the General Counsel, and such other offices as may be appropriate.

[49 FR 13236, Apr. 3, 1984, as amended at 50 FR 50301, Dec. 10, 1985]

701.376-2 AIDAR Notices.

AIDAR Notices will be used to promulgate changes to the AIDAR. Such Notices will be prepared by the Procurement Executive.

701.376-3 Appendices.

Procurement policies and instructions which are essentially informational or procedural may be issued as Appendices to the AIDAR. Appendices are filed behind the main text of the AIDAR in a section entitled "Appendices to Chapter 7." The Appendices section contains a table of contents and individual Appendices. The Appendices are identified by letter and subject title (e.g. Appendix A, [title]).

701.376-4 Implementation within AID contracting activities.

The heads of the various AID contracting activities may issue operating instructions and procedures consistent with the FAR, AIDAR, and other Agency regulations, policies, and procedures for application within their organizations. One copy of each such issuance shall be forwarded to the Planning, Policy and Evaluation Staff (MS/PPE). Insofar as possible, such material will be numerically keyed to the AIDAR.

[49 FR 13236, Apr. 3, 1984, as amended at 50 FR 50302, Dec. 10, 1985; 55 FR 6802, Feb. 27, 1990]

701.377 Procurement policy.

Subject to the direction of the Administrator, the Procurement Executive will be responsible for the development and maintenance of necessary uniform procurement policies, procedures, and standards; for providing assistance to the contracting activities as appropriate; for keeping the Administrator and Executive Staff fully informed on procurement matters which should be brought to their attention.

Subpart 701.4—Deviations From the FAR or AIDAR

701.402 Policy.

It is the policy of AID that deviation from the mandatory requirements of the FAR and AIDAR shall be kept at a minimum and be granted only if it is essential to effect necessary procurement and when special and exceptional circumstances make such deviation clearly in the best interest of the Government.

701.470 Procedure.

(a) Deviation from the FAR or AIDAR affecting one contract or transaction.

(1) Deviations which affect only one contract or procurement will be made only after prior approval by the head of the contracting activity. Deviation requests containing the information listed in paragraph (c) of this section shall be submitted sufficiently in advance of the effective date of such deviation to allow adequate time for consideration and evaluation by the head of the contracting activity.

(2) Requests for such deviations may be initiated by the responsible AID

contracting officer who shall obtain clearance and approvals as may be required by the head of the contracting activity. Prior to submission of the deviation request to the head of the contracting activity for approval, the contracting officer shall obtain written comments from the Planning, Policy and Evaluation Staff, MS/PPE, hereinafter referred to as "PPE". The PPE shall normally be allowed 10 working days prior to the submission of the deviation request to the head of the contracting activity to review the request and to submit comments. If the exigency of the situation requires more immediate action, the requesting office may arrange with the PPE for a shorter review period. In addition to a copy of the deviation request, the PPE shall be furnished any background or historical data which will contribute to a more complete understanding of the deviation. The comments of the PPE shall be made a part of the deviation request file which is forwarded to the head of the contracting activity.

(3) Coordination with the Office of General Counsel, as appropriate, should also be effected prior to approval of a deviation by the head of the contracting activity.

(b) Class deviations from the FAR or AIDAR: Class deviations are those which affect more than one contract or contractor.

(1) Class deviations from the AIDAR will be processed in the same manner as prescribed in paragraph (a) of this section.

(2) Class deviations from the FAR shall be considered jointly by AID and the Chairperson of the Civilian Agency Acquisition Council (C/CAAC) (FAR 1.404) unless, in the judgement of the head of the contracting activity, after due consideration of the objective of uniformity, circumstances preclude such consultation. The head of the contracting activity shall certify on the face of the deviation the reason for not coordinating with the C/CAAC. In such cases, the PPE, shall be responsible for notifying the C/CAAC of the class deviation.

(3) Class deviations from the FAR shall be processed as follows:

(i) The request shall be processed in the same manner as paragraph (a) of this section, except that the PPE, shall be allowed 15 working days prior to the submission of the deviation request to the head of the contracting activity to effect the necessary coordination with the C/CAAC and to submit comments. If the exigency of the situation requires more immediate action, the requesting office may arrange with the PPE for a shorter review and coordination period. The comments of the C/CAAC and the PPE shall be made a part of the deviation request file which is forwarded to the head of the contracting activity.

(ii) The request shall be processed in the same manner as paragraph (a) of this section if the request is not being jointly considered by AID and the C/CAAC.

(4) Deviations involving basic agreements or other master type contracts are considered to involve more than one contract.

(5) Unless the approval is sooner rescinded, class deviations shall expire 2 years from the date of approval provided that deviation authority shall continue to apply to contracts or task orders which are active at the time the class deviation expires. Authority to continue the use of such deviation beyond 2 years may be requested in accordance with the procedures prescribed in paragraph (a) of this section.

(6) Expiration dates shall be shown on all class deviations.

(c) Requests for deviation shall contain a complete description of the deviation, the effective date of the deviation, the circumstances in which the deviation will be used, a specific reference to the regulation being deviated from, an indication as to whether any identical or similar deviations have been approved in the past, a complete justification of the deviation including any added or decreased cost to the Government, the name of the contractor, and the contract or task order number.

(d) Register of deviations: Separate registers shall be maintained by the procuring activities of the deviations granted from the FAR and AIDAR. Each deviation shall be recorded in its appropriate register and shall be assigned a control number as follows:

the symbol of the procuring activity, the abbreviation "DEV", the fiscal year, the serial number [issued in consecutive order during each fiscal year] assigned to the particular deviation and the suffix "c" if it is a class deviation, e.g. CM-DEV-85-1, CM-DEV-85-2c. The control number shall be embodied in the document authorizing the deviation and shall be cited in all references to the deviation.

(e) Central record of deviations: Copies of approved deviations shall be furnished promptly to the PPE, who shall be responsible for maintaining a central record of all deviations that are granted.

(f) Semiannual report of class deviations:

(1) AID contracting officers shall submit a semiannual report to the PPE of all contract actions effected under class deviations to the FAR and AIDAR which have been approved pursuant to paragraph (b) of this section.

(2) The report shall contain the applicable deviation control number, the contractor's name, contract number and task order number (if appropriate).

(3) The report shall cover the 6-month periods ending June 30 and December 31, respectively, and shall be submitted within 20 working days after the end of the reporting period.

[49 FR 13236, Apr. 3, 1984, as amended at 50 FR 50302, Dec. 10, 1985; 55 FR 6802, Feb. 27, 1990]

Subpart 701.6—Contracting Authority and Responsibility

701.601 General.

(a) Except as otherwise prescribed, the head of each contracting activity (as defined in 702.170) is responsible for the procurement of supplies and services under or assigned to the procurement cognizance of his or her activity. The heads of A.I.D. contracting activities are vested with broad authority to carry out the programs and activities for which they are responsible. This authority includes authority to execute contracts and the establishment of procurement policies, procedures, and standards appropriate for their programs and activities, subject to Government-wide and A.I.D. requirements and restrictions (see 701.376-4).

(b) The authority of heads of contracting activities to execute contracts are limited as follows:

(1) Director, Office of Procurement. Unlimited authority to execute contracts. May issue warrants for small purchase authority up to $25,000 to qualified individuals on his or her staff.

(2) Director, Office of U.S. Foreign Disaster Assistance. Authority to execute contracts for disaster relief purposes during the first 72 hours of a disaster in a cumulative total amount not to exceed $500,000 (A.I.D. Handbook 8, Chapter 5). Authority to execute small purchases up to $25,000 at any time. May issue warrants for small purchase authority up to $25,000 to qualified individuals on his or her staff.

(3) Director, Office of Management Operations. Authority to execute small purchases up to $25,000 for supplies and services, except professional non-personal services and personal services. Unlimited authority when ordering against GSA or other established U.S. Government ordering agreements. May issue warrants for small purchase authority up to $25,000 to qualified individuals on his or her staff.

(4) Director, Office of International Training. Authority to execute small purchases up to $10,000. Unlimited authority for procuring participant training based on published catalog prices using MS/PPE approved forms. May issue warrants for small purchases up to $10,000 to qualified individuals on his or her staff.

(5) Overseas heads of contracting activities. Authority to sign contracts where the cumulative amount of the contract, as amended, does not exceed $250,000 (or local currency equivalent) for personal services contracts or $100,000 (or local currency equivalent) for all other contracts. May issue warrants for small purchases up to $25,000 to qualified individuals on his or her staff.

[53 FR 4980, Feb. 19, 1988; 55 FR 6802, Feb. 27, 1990]

701.602-3 Ratification of unauthorized commitments.

(a) [Reserved]

(b) *Policy.* (1) [Reserved]

(2) In order to maintain management oversight and controls on unauthorized commitments, authority to ratify unauthorized commitments within A.I.D. is reserved to the A.I.D. Procurement Executive.

[53 FR 6829, Mar. 3, 1988]

701.603 Selection, appointment, and termination of appointment.

701.603-70 Designation of contracting officers.

A contracting officer represents the U.S. Government through the exercise of his/her delegated authority to negotiate, sign, and administer contracts on behalf of the U.S. Government. The contracting officer's duties are sensitive, specialized, and responsible. In order to insure proper accountability, and to preclude possible security, conflict of interest, or jurisdiction problems, it is AID policy that AID contracting officers must be U.S. citizen employees of the U.S. Government.

PART 702—DEFINITIONS OF WORDS AND TERMS

Subpart 702.170—Definitions

Sec.

702.170-1 AID.
702.170-2 Administrator.
702.170-3 Contracting activities.
702.170-4 Cooperating country.
702.170-5 Cooperating country national (CCN).
702.170-6 Executive agency.
702.170-7 Foreign Assistance Act.
702.170-8 Government, Federal, State, local and political subdivisions.
702.170-9 Head of agency.
702.170-10 Head of the contracting activity.
702.170-11 Mission.
702.170-12 Overseas.
702.170-13 Procurement Executive.
702.170-14 Senior Procurement Executive.
702.170-15 Third country national (TCN).
702.170-16 U.S. national (USN).

Subpart 702.270—Definitions Clause

702.270-1 Definitions clause.

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

SOURCE: 49 FR 13238, Apr. 3, 1984, unless otherwise noted.

Subpart 702.170—Definitions

702.170-1 AID.

"AID" means the Agency for International Development and its predecessor agencies, including the International Cooperation Administration (ICA).

702.170-2 Administrator.

"Administrator" means the Administrator or Deputy Administrator of the Agency for International Development.

702.170-3 Contracting activities.

The contracting activities within AID are:

(a) *The AID/Washington activities.* The contracting activities located in Washington are the Office of Procurement, Office of Management Operations, Office of Foreign Disaster Assistance, and Office of International Training. Subject to the limitations stated in 702.170-10, these contracting activities are responsible for procurement related to programs and activities for their areas. The Office of Procurement is responsible for procurements which do not fall within the responsibility of other contracting activities, or which are otherwise assigned to it.

(b) *The overseas field contracting activities.* Each AID Mission or post overseas is a contracting activity, responsible for procurement related to its programs and activities, subject to the limitations in 702.170-10(b), which sets forth the contracting authority for Mission Directors and principal AID officers at posts.

[50 FR 16085, Apr. 24, 1985, as amended at 50 FR 40528, Oct. 4, 1985; 50 FR 50302, Dec. 10, 1985; 51 FR 20651, June 6, 1986]

702.170-4 Cooperating country.

"Cooperating country" means a foreign country in which there is a program or activity administered by AID.

702.170-5 Cooperating country national (CCN).

Cooperating country national (CCN) means an individual who is a cooperating country citizen or a non-cooperating country citizen lawfully admitted for permanent residence in the cooperating country.

702.170-6 Executive agency.

"Executive agency" includes the Agency for International Development (AID) and its predecessor agencies, including the International Cooperation Administration.

702.170-7 Foreign Assistance Act.

"Foreign Assistance Act" means the Foreign Assistance Act of 1961, as amended (22 U.S.C., Chapter 32).

702.170-8 Government, Federal, State, local and political subdivisions.

As used in the FAR and AIDAR, these terms do not refer to foreign entities except as otherwise stated.

702.170-9 Head of agency.

"Head of agency" means, for AID, the Administrator, and the Deputy Administrator, and in accordance with the responsibilities and limitations set forth in 702.170-13(c)(4), the Agency Procurement Executive.

[50 FR 52780, Dec. 26, 1985]

702.170-10 Head of the contracting activity.

(a) The heads of A.I.D. contracting activities are listed below. The limits of their contracting authority are set forth in 701.601.

(1) A.I.D./Washington Heads of Contracting Activities:

(i) Director, Office of Procurement;

(ii) Director, Office of Management Operations;

(iii) Director, Office of U.S. Foreign Disaster Assistance; and

(iv) Director, Office of International Training.

(2) Overseas Heads of Contracting Activities: Each Mission Director or principal A.I.D. officer at post (e.g. A.I.D. Representative, A.I.D. Affairs Officer, etc.)

(b) Individuals serving in the positions listed in (a)(1) and (a)(2) of this section in an "Acting" capacity may exercise the authority delegated to that position.

[53 FR 4980, Feb. 19, 1988]

702.170-11 Mission.

"Mission means the AID mission or the principal AID office or representative (including an embassy designated to so act) in a foreign country in which there is a program or activity administered by AID.

702.170-12 Overseas.

"Overseas" means outside the United States, its possessions, and Puerto Rico.

702.170-13 Procurement Executive.

(a) "Procurement Executive" means the AID official who:

(1) Is responsible to the Administrator, through the Assistant to the Administrator for Management, for management direction of AID's procurement system, including implementation of AID's unique procurement policies, regulations, and standards, and

(2) Oversees development of the system, evaluates system performance in accordance with approved criteria, and certifies to the Administrator, through the Assistant to the Administrator for Management, that the AID procurement system meets approved criteria.

(b) The Procurement Executive for AID is Mr. John F. Owens, the Deputy Assistant to the Administrator for Management Services. Mr. Owens reports and makes recommendations to the Administrator, the Deputy Administrator, or other AID officials, as appropriate, with regard to the implementation and improvement of the procurement system and procurement staffing to meet the objectives and requirements of the Foreign Assistance Act, Executive Order 12352, the Office of Federal procurement Policy Act, and other statutory and Executive Branch procurement policies and requirements applicable to AID operations. These reports and recommendations, including results of case reviews requested by the Deputy Administrator, will deal with the use of effective competition in procurement; establishment of clear lines of authority, accountability, and responsibility for procurement decision making within AID; and development and maintenance of a procurement career management program to assure an adequate professional work force.

(c) The AID Procurement Executive has specific authority to:

(1) Select and appoint contracting officers and terminate their appointments in accordance with section 1.603 of the Federal Acquisition Regulation;

(2) Issue, develop, and maintain the Agency's acquisition regulations, procedures and standards for issuance in accordance with established agency delegations and requirements, as provided in Subpart 1.3 of the Federal Acquisition Regulation;

(3) Exercise in person or by delegation the authorities stated in Subpart 1.4 of the Federal Acquisition Regulation with regard to deviations from that regulation; and

(4) Act for the Administrator, as "head of the agency" for all other purposes of the Federal Acquisition Regulation and the AID Acquisition Regulation, except for the authority in FAR 6.302-7(a)(2), 6.302-7(c)(1), 7.103, 17.602(a), 19.201(c)(2), 19.201(c)(3), 27.306(a), 27.306(b), and 30.201-5 or where the "head of the agency" authority is expressly not redelegable under the FAR or AIDAR.

[50 FR 52781, Dec. 26, 1985, as amended at 52 FR 38097, Oct. 14, 1987; 53 FR 50630, Dec. 16, 1988; 54 FR 37334, Sept. 8, 1989; 55 FR 6802, Feb. 27, 1990]

702.170–14 Senior Procurement Executive.

"Senior Procurement Executive" is synonymous with the term "Procurement Executive", as defined in 702.170-13 of this subpart.

[50 FR 16086, Apr. 24, 1985]

702.170–15 Third country national (TCN).

"Third country national (TCN)" means an individual who is neither a cooperating country national nor a U.S. national, but is a citizen of a Free World Country (i.e., Geographic Code 935).

[49 FR 13238, Apr. 3, 1984. Redesignated at 50 FR 16086, Apr. 24, 1985]

702.170–16 U.S. national (USN).

"U.S. national (USN)" means an individual who is a U.S. citizen or a non-U.S. citizen lawfully admitted for permanent residence in the United States.

[49 FR 13238, Apr. 3, 1984. Redesignated at 50 FR 16086, Apr. 24, 1985]

Subpart 702.270—Definitions Clause

702.270–1 Definitions clause.

Use the appropriate clause in 752.202-1, in addition to the clause in FAR 52.202-1.

PART 703—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 703.4—Contingent Fees

703.403 Applicability.

The exception stated in FAR 3.404(b)(6) for contracts to be made in foreign countries will not be used.

[49 FR 13239, Apr. 3, 1984]

PART 704—ADMINISTRATIVE MATTERS

Subpart 704.4—Safeguarding Classified Information Within Industry

Sec.
704.404 Contract clause.

Subpart 704.8—Contract Files

704.803 Contents of contract files.

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 704.4—Safeguarding Classified Information Within Industry

704.404 Contract clause.

If the contract involves access to classified ("Confidential", "Secret", or "Top Secret"), or administratively controlled ("Limited Official Use") information, use the contract clause in 752.204-2.

[49 FR 13239, Apr. 3, 1984. Redesignated at 54 FR 16122, Apr. 21, 1989]

Subpart 704.8—Contract Files

704.803 Contents of contract files.

(a) In order that the official contract file may contain a full history of each procurement to support actions taken by various personnel in the procurement cycle, provide information for reviews conducted by AID or others, supply data for use in preparing replies to Congressional inquiries, and furnish essential facts in the event of litigation, each such file shall contain the data required by 4.803 of the FAR, and the following additional data, as applicable:

(1) A full record of negotiations (memorandum of negotiation) including, but not limited to:

(i) Participants,

(ii) Dates and places of meetings,

(iii) Selection of the successful contractor, including reasons for selection,

(iv) Agreements on Government-furnished materials, equipment, or facilities,

(v) Technical or financial recommendations,

(vi) Terms, conditions and type of contract agreed to,

(vii) Agreements on subcontracting,

(viii) Justification for fixed fee or profit, and

(ix) Justification for final cost or price;

(2) Any required approvals and clearances (such as General Counsel, security, project office, Mission, Office of Small and Disadvantaged Business Utilization, Office of Information Rescurces Management, Communications Review Board);

(3) Any exceptions or exemptions to the Buy American Act, Foreign Assistance Act, or AID's nationality policy (Part 725 or Part 25 of the FAR);

(4) Copies of all amendments and task orders with supporting documents;

(5) Copy of contractor's established policies and practices covering compensation, leave, work week, promotions, etc.;

(6) Copy of contracting officer's decisions under the disputes clause (FAR 33.011);

(7) All other pertinent correspondence, documents and reports;

(8) Financial release upon completion of the contract (release forms, 753.270-3).

[49 FR 13239, Apr. 3, 1984]

SUBCHAPTER B—ACQUISITION PLANNING

PART 705—PUBLICIZING CONTRACT ACTIONS

Sec.
705.002 Policy.

Subpart 705.2—Synopsis of Proposed Contract Actions

705.202 Exceptions.
705.207 Preparation and transmittal of certain synopses.

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR Part 1979 Comp., p. 435; 40 U.S.C. 474.

705.002 Policy.

AID's Office of Small and Disadvantaged Business Utilization maintains an A.I.D. Consultant Registry Information System (ACRIS), which serves as a reference source and an indication of a prospective contractor's interest in performing AID contracts. Prospective contractors are invited to file the appropriate form (Standard Forms 254/255, Architect-Engineer and Related Services Questionnaire; or AID Form 1420-50, A.I.D. Consultant Registry Information System (ACRIS) Organization and Individual Profile) with AID's Office of Small and Disadvantaged Business Utilization (Department of State, Agency for International Development, Washington, DC 20523—Attention: Office of Small and Disadvantaged Business Utilization). These forms should be updated annually.

[50 FR 40976, Oct. 8, 1985, and 50 FR 51396, Dec. 17, 1985, as amended at 52 FR 21058, June 4, 1987]

Subpart 705.2—Synopsis of Proposed Contract Actions

705.202 Exceptions.

(a) [Reserved]

(b) The head of the Agency for International Development has determined in writing, after consultation with the Administrators for Federal Procurement Policy and the Small Business Administration that advance notice is not appropriate or reasonable for:

(1) Contract actions described in AIDAR 706.302-70(b)(1)-(3).

(2) Contract actions of $100,000 or less by an AID Mission made and performed outside of the United States, its possessions, or Puerto Rico, where only local sources are solicited. (For purposes of this paragraph, "local source" is any firm, organization, or individual present in the cooperating country.)

(c) In accordance with section 579 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990, (Pub. L. No. 101-167) advance notice is not required for contract actions described in 706.302-71.

[51 FR 42845, Nov. 26, 1986, as amended at 54 FR 28069, July 5, 1989; 55 FR 8469, Mar. 8, 1990; 55 FR 39154, Sept. 25, 1990]

705.207 Preparation and transmittal of certain synopses.

In accordance with section 579 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990, the responsible contracting officer shall notify AID's Office of Small and Disadvantaged Business Utilization (OSDBU) at least seven business days before publicizing a solicitation in the Commerce Business Daily for an acquisition (a) which is to be funded from amounts made available for fiscal year 1990 for any development assistance and for assistance for famine recovery and development in Africa and (b) which is expected to exceed $100,000. For exceptions, see 726.104.

[55 FR 39154, Sept. 25, 1990]

PART 706—COMPETITION REQUIREMENTS

Sec.
706.003 Definitions.

Subparts 706.1—706.2 [Reserved]

Subpart 706.3—Other Than Full and Open Competition

706.302-5 Authorized or required by statute.
706.302-70 Impairment of foreign aid programs.
706.302-71 Small disadvantaged businesses.
706.303-1 Requirements.

Subpart 706.5—Competition Advocates

706.501 Requirement.

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR Part 1979 Comp., p. 435; 40 U.S.C. 474.

706.003 Definitions.

"Procuring activity" means "contracting activity", as defined in 702.170-3.

[50 FR 40528, Oct. 4, 1985]

Subparts 706.1—706.2 [Reserved]

Subpart 706.3—Other Than Full and Open Competition

706.302-5 Authorized or required by statute.

AID has authority under the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990, to contract with small business concerns owned and controlled by socially and economically disadvantaged individuals using other than full and open competition. The provisions implementing this authority are set forth in 706.302-71 and part 726.

[55 FR 8469, Mar. 8, 1990, and 55 FR 39154, Sept. 25, 1990]

706.302-70 Impairment of foreign aid programs.

(a) *Authority.* (1) Citation: 40 U.S.C. 474.

(2) Full and open competition need not be obtained when it would impair or otherwise have an adverse effect on programs conducted for the purposes of foreign aid, relief, and rehabilitation.

(b) *Application.* This authority may be used for:

(1) An award under section 636(a)(3) of the Foreign Assistance Act of 1961, as amended, involving a personal services contractor serving abroad;

(2) An award of $100,000 or less by an overseas contracting activity;

(3)(i) An award for which the Assistant Administrator responsible for the project or program makes a formal written determination, with supporting findings, that compliance with full and open competition procedures would impair foreign assistance objectives, and would be inconsistent with the fulfillment of the foreign assistance program; or

(ii) Awards for countries, regions, projects, or programs for which the Administrator of AID makes a formal written determination, with supporting findings, that compliance with full and open competition procedures would impair foreign assistance objectives, and would be inconsistent with the fulfillment of the foreign assistance program.

(4) Awards under AIDAR 715.613-70 (Title XII selection procedure—general) or 715.613-71 (Title XII selection procedure—collaborative assistance).

(c) *Limitations.* (1) Offers shall be requested from as many potential offerors as is practicable under the circumstances.

(2) The contract file must include appropriate explanation and support justifying the award without full and open competition, as provided in FAR 6.303, except that determinations made under 706.302-70(b)(3) will not be subject to the requirement for contracting officer certification or to approvals in accord with FAR 6.304.

(3) The authority in 706.302-70(b)(3)(i) shall be used only when no other authority provided in FAR 6.302 or AIDAR 706.302 is suitable. The specific foreign assistance objective which would be impaired must be identified and explained in the written determination and finding. Prior consultation with the Agency Competition Advocate (see 706.501) is required before executing the written determination

and finding, and this consultation must be reflected in the determination and finding.

[50 FR 40976, Oct. 8, 1985, and 50 FR 51395, Dec. 17, 1985, as amended at 54 FR 28069, July 5, 1989; 54 FR 46389, Nov. 3, 1989]

706.302-71 Small Disadvantaged Businesses.

(a) *Authority.* (1) Citation: Section 579 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990, Public Law No. 101-167, 103 Stat. 1195, 1248-49 (1989).

(2) Section 579(a) of Public Law 101-167 requires that, except to the extent otherwise determined by the Administrator, not less than ten percent of amounts made available for fiscal year 1990 for development assistance and for assistance for famine recovery and development in Africa be used only for activities of disadvantaged enterprises (as defined in 726.101). In order to achieve this goal, section 579(b) authorizes AID to use other than full and open competition to award contracts to small business concerns owned and controlled by socially and economically disadvantaged individuals (small disadvantaged businesses), as the terms are defined in 726.101.

(b) *Application.* This authority may be used only if the Agency determines in accordance with 726.103 that:

(1) The acquisition is to be funded from amounts referred to in paragraph (a)(2) of this section;

(2) Award of the acquisition to a small disadvantaged business is appropriate to meet the requirement in paragraph (a)(2) of this section;

(3) After considering whether the acquisition can be made under the authority of section 8(a), award of the acquisition under section 8(a) is not practicable; and

(4) Two or more responsive offers from responsible small disadvantaged businesses can reasonably be expected.

(c) *Limitations.* (1) Offers shall be requested from as many small disadvantaged businesses as is practicable under the circumstances.

(2) Use of this authority is not subject to the requirements in FAR 6.303 and FAR 6.304, provided that the contract file includes a certification by the contracting officer stating that the procurement is being awarded pursuant to 706.302-71 and that the application requirements and limitations of 706.302-71 (b) and (c) have been complied with.

[55 FR 39154, Sept. 25, 1990]

706.303-1 Requirements.

(a)-(c) [Reserved]

(d) AID project procurements are generally not subject to the Trade Agreements Acts of 1979 (see 725.403 of this chapter). To the extent procurements are made under the authority of FAR 6.302-3(a)(2)(i) or FAR 6.302-7 with Operating Expenses (OE) Funds, the Contracting Officer shall send a copy of the justification to the Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506, ATTN: Director, International Procurement Policy.

[50 FR 16086, Apr. 24, 1985]

Subpart 706.5—Competition Advocates

706.501 Requirement.

The AID Administrator delegated the authority to designate the agency competition advocate and a competition advocate for each agency procuring activity (see 706.003 of this part) to the AID Procurement Executive. The AID Procurement Executive, under the Administrator's delegation, has designated the Chief of the Planning, Policy and Evaluation Staff (MS/PPE), as the Agency's competition advocate and the deputy head (or equivalent) of each contracting activity as the competition advocate for that activity. If there is no deputy or equivalent, the head of the contracting activity is designated the competition advocate for that activity. The competition advocate's duties may not be redelegated, but can be exercised by persons serving as acting deputy (or acting head) of the contracting activity. For definitions of contracting activity and head of contracting activity, see 702.170-3 and 702-170-10, respectively.

[50 FR 40528, Oct. 4, 1985, as amended at 51 FR 11449, Apr. 3, 1986; 54 FR 46389, Nov. 3, 1989; 55 FR 6802, Feb. 27, 1990]

PART 707—ACQUISITION PLANNING

Subpart 707.1—Acquisition Plans—[Reserved]

PART 708—REQUIRED SOURCES OF SUPPLIES AND SERVICES

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 708.1—Excess Personal Property

708.102-70 Policy.

See AID Handbook 16, Excess Property.

[49 FR 13240, Apr. 3, 1984]

PART 709—CONTRACTOR QUALIFICATIONS

Subpart 709.1—Responsible Prospective Contractors

709.104-3 Application of standards.

Subpart 709.4—Debarment, Suspension and Ineligibility

709.402 Policy.

Subpart 709.5—Organizational Conflicts of Interest

709.503 Waiver.

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 709.1—Responsible Prospective Contractors

709.104-3 Application of standards.

(a)-(b) [Reserved]

(c) *Satisfactory performance record.* In order to evaluate the prospective contractor's performance record, the contracting officer shall include the solicitation provision in 752.209-70 in all solicitations.

[50 FR 23712, June 5, 1985]

Subpart 709.4—Debarment, Suspension and Ineligibility

709.402 Policy.

The policies and procedures governing the debarment, suspension, and ineligibility of "government procurement" contractors and suppliers are set forth in the Federal Acquisition Regulation, 48 CFR Subpart 9.4. For debarment and suspension of these government procurement contractors and suppliers AID applies the procedures set forth in 22 CFR Part 208, which is also AID's regulation for the debarment, suspension, and ineligibility of awardees of agreements other than government procurement contracts.

[52 FR 21058, June 4, 1987]

Subpart 709.5—Organizational Conflicts of Interest

709.503 Waiver.

For purposes of approving waivers or redelegating the authority to approve waivers pursuant to FAR 9.503, the A.I.D. Procurement Executive is the Agency head (see AIDR 702.170-13(c)(4). The Procurement Executive had redelegated the authority to approve waivers pursuant to FAR 9.503 to the heads of contracting acitivites in A.I.D., as defined in AIDAR 702.170-10.

[54 FR 16122, Apr. 21, 1989]

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 713—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

713.000 Scope of part.

The $25,000 ceiling applies to the cost of supplies and services, exclusive of the cost of transportation and other accessorial costs if their destination is outside the United States.

[49 FR 31898, Aug. 9, 1984]

PART 714—SEALED BIDDING

Subpart 714.4—Opening of Bids and Award of Contract

Sec.
714.406-3 Other mistakes disclosed before award.
714.406-4 Disclosure of mistakes after award.

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 714.4—Opening of Bids and Award of Contract

714.406-3 Other mistakes disclosed before award.

The Procurement Executive is the designated central authority to make the determinations described in FAR 14.406-3.

[49 FR 13240, Apr. 3, 1984, as amended at 54 FR 46389, Nov. 3, 1989]

714.406-4 Disclosure of mistakes after award.

The Procurement Executive is the designated central authority to make the determinations described in FAR 14.406-4.

[49 FR 13240, Apr. 3, 1984]

PART 715—CONTRACTING BY NEGOTIATION

Subpart 715.5—Unsolicited Proposals

Sec.
715.502 Policy.
715.504 Advance guidance.
715.506 Agency procedures and point of contact.
715.506-1 Receipt, and initial review.

Subpart 715.6—Source Selection

715.605 Evaluation factors.
715.605-70 AID specific evaluation factors.
715.608-70 Proposal evaluation.
715.613 Alternative source selection procedures.
715.613-70 Title XII selection procedure—general.
715.613-71 Title XII selection procedure—collaborative assistance.

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

SOURCE: 49 FR 13240, Apr. 3, 1984, unless otherwise noted.

Subpart 715.5—Unsolicited Proposals

715.502 Policy.

(a) AID encourages the submission of unsolicited proposals which contribute new ideas consistent with and contributing to the accomplishment of the Agency's objectives. However, the requirements for contractor resources are normally quite program specific, and thus widely varied, and must be responsive to host country needs. Futher, AID's projects are usually designed in collaboration with the cooperating country. These factors can limit both the need for, and AID's ability to use unsolicited proposals. Therefore, prospective offerors are encouraged to contact AID to determine the Agency's technical and geographical requirements as related to the offeror's interests before preparing and submitting a formal unsolicited proposal.

(b) AID's basic policies and procedures regarding unsolicited proposals are those established in FAR 15.5 and this subpart.

(c) For detailed information on unsolicited proposals, see 715.504; for initial contact point within AID, see 715.506.

715.504 Advance guidance.

(a) Information concerning AID's policies and procedures for unsolicited proposals is available from the Department of State, Agency for International Development, Washington, DC 20523, to the attention of either OSDBU/MRC, 1400A, SA-14, or, for research, S&T/RUR, Room 309, SA-18.

(b) The information available concerns:

(1) Contact points within AID;

(2) Definitions;

(3) Characteristics of a suitable proposal;

(4) Determination of contractor responsibility;

(5) Organizational conflict of interest;

(6) Cost sharing; and

(7) Procedures for submission and evaluation of proposals.

[49 FR 13240, Apr. 3, 1984, as amended at 50 FR 50302, Dec. 10, 1985; 52 FR 21058, June 4, 1987]

715.506 Agency procedures and point of contact.

Initial inquiries and subsequent formal unsolicited proposals (other than research) should be submitted to the Department of State, AID, Washington, DC 20523, Attention: OSDBU/MRC, 1400A, SA-14. Formal unsolicited proposals for research should be submitted to the Department of State, AID, Washington, DC 20523, Attention: S&T/RUR, Room 309, SA-18.

[49 FR 13240, Apr. 3, 1984, as amended at 50 FR 50302, Dec. 10, 1985; 52 FR 21058, June 4, 1987]

715.506-1 Receipt, and initial review.

AID follows the policies and procedures established on FAR 15.506-1 and 15.506-2.

Subpart 715.6—Source Selection

715.605 Evaluation factors.

715.605-70 AID specific evaluation factors.

(a) Use of prior AID or other U.S. governmental experience as an evaluation factor is not usually appropriate. If such a criterion is proposed, its use must be approved by the Head of the Contracting Activity; no numerical value may be assigned, nor may such factor be listed as a significant evaluation factor or subfactor without the approval of the Head of the Contracting Activity.

(b) Prior overseas experience and experience in the region or country concerned is often a significant evaluation factor; when it is used, both organizational experience and experience of proposed personnel should be considered. When using prior overseas/regional/country experience as an evaluation factor, it is not to be a controlling factor and may not be assigned a value greater than 10% (e.g., 10 points in a 100 point matrix) without the approval of the cognizant Assistant Administrator or Mission Director.

[54 FR 46389, Nov. 3, 1989]

715.608-70 Proposal evaluation.

(a) *AID evaluation committees.* An evaluation committee shall be established for each proposed procurement. In each case, these committees shall be composed of a chairman representing the project office, a representative of the contracting office, and representatives from other concerned offices as appropriate.

(b) *Functions and procedures of AID evaluation committees.*

(1) The functions of an evaluation committee shall be:

(i) To evaluate all proposals pursuant to the evaluation criteria established and set forth in the solicitation document.

(ii) To prepare a written listing of all offerors together with the results of the evaluation of their proposals. Such a listing shall be sent by the chairman to the contracting officer setting forth the results of the evaluation.

(iii) The contracting officer is responsible for reviewing the written evaluation results to determine that they are adequate and complete.

(2) The procedures for an evaluation committee shall be:

(i) The contracting officer will receive all proposals and provide a listing and copies to the chairman.

(ii) The chairman will promptly call a meeting of the committee to evaluate the proposals received. The evaluation will be based on the evaluation factors set forth in the solicitation document.

(iii) No member of the AID evaluation committee shall hold discussions with any offeror before or during the AID evaluation committee's proceedings.

[49 FR 13240, Apr. 3, 1984. Redesignated and amended at 50 FR 16087, Apr. 24, 1985]

715.613 Alternative source selection procedures.

[52 FR 6158, Mar. 2, 1987]

715.613-70 Title XII selection procedure—general.

(a) *General.* The Deputy Administrator has determined, as provided in AIDAR 706.302-70(b)(3)(ii) that use of this Title XII source selection procedure is necessary so as not to impair or affect AID's ability to administer Title XII of the Foreign Assistance Act. This determination is reflected in AIDAR 706.302-70(b)(4). This constitutes authority for other than full and open competition when selecting Title XII institutions to perform Title XII projects.

(b) *Scope of subsection.* This subsection prescribes policies and procedures for the selection of institutions eligible under Title XII of the Foreign Assistance Act of 1961, as amended, to perform activities authorized under Title XII.

(c) *Applicability.* The provisions of this subsection are applicable when the project office certifies that the activity is authorized under Title XII, and determines that use of the Title XII selection procedure is appropriate.

(d) *Solicitation, evaluation, and selection procedures.* (1) Competition shall be sought among eligible Title XII institutions to the maximum practicable extent; this requirement shall be deemed satisfied when a contractor is selected under the procedures of this subsection.

(2) The project office shall—

(i) Prepare selection criteria for evaluation of eligible institutions for use in preparing the source list, determining predominantly qualified sources, and selecting the contractor;

(ii) Prepare an initial list of eligible institutions considered qualified to perform the proposed activity;

(iii) Provide a statement describing qualifications and areas of expertise considered essential, a statement of work, estimate of personnel requirements, special requirements (logistic support, government furnished property, and so forth) for the contracting officer's use in preparing the request for technical proposal (RFTP).

(iv) Send a memorandum incorporating the certification and determination required by paragraph (c) of this section, together with the information required by paragraphs (d)(2) (i) through (iii) of this section, with the "Action" copy of the PIO/T to the contracting officer, requesting him/her to prepare and distribute the RFTP.

(3) Upon receipt and acceptance of the project officer's request, the contracting officer shall prepare the RFTP. The RFTP shall contain sufficient information to enable an offeror to submit a responsive and complete technical proposal. This includes a definitive statement of work, an estimate of the personnel required, and special provisions (such as logistic support, government furnished equipment, and so forth), a proposed contract format, and evaluation criteria. No cost or pricing data will be requested or required by the RFTP. The RFTP will be distributed to the eligible institutions recommended by the project office. The RFTP will be synopsized, as required by FAR 5.201, and will normally allow a minimum of 60 days for preparation and submission of a proposal.

(4) Upon receipt of responses to the RFTP by the contracting officer, an evaluation committee will be estab-

lished as provided for in 715.608 of this subpart.

(5) The evaluation committee will evaluate all proposals in accordance with the criteria set forth in the RFTP, and will prepare a selection memorandum which shall:

(i) State the evaluation criteria;

(ii) List all of the eligible institutions whose proposals were reviewed;

(iii) Report on the ranking and rationale therefor for all proposals;

(iv) Indicate the eligible institution or institutions considered best qualified.

(6) The evaluation committee will submit the selection memorandum to the contracting officer for review and approval.

(7) The contracting officer will either approve the selection memorandum, or return it to the evaluation committee for reconsideration for specified reasons.

(8) If the selection memorandum is approved, the contracting officer shall obtain cost, pricing, and other necessary data from the recommended institution or institutions and shall conduct negotiations. If a satisfactory contract cannot be obtained, the contracting officer will so advise the evaluation committee. The evaluation committee may then recommend an alternate institution or institutions.

[52 FR 6158, Mar. 2, 1987, as amended at 54 FR 28069, July 5, 1989; 55 FR 6802, Feb. 27, 1990]

715.613-71 Title XII selection procedure—collaborative assistance.

(a) *General.* The Deputy Administrator has determined, as provided in AIDAR 706.302-70(b)(3)(ii) that use of this Title XII source selection procedure is necessary so as not to impair or affect AID's ability to administer Title XII of the Foreign Assistance Act. This determination is reflected in AIDAR 706.302-70(b)(4). This constitutes authority for other than full and open competition when selecting Title XII institutions to perform Title XII projects.

(b) *Scope of subsection.* This section prescribes policies and procedures for the selection of institutions eligible under Title XII of the Foreign Assistance Act of 1961, as amended, to perform activities authorized under Title XII, where AID has determined that use of the collaborative assistance contracting system is appropriate.

(c) *Definition.* (1) A collaborative assistance project is any project for which it has been determined under paragraph (e) of this subsection that:

(i) A continuing collaborative relationship between AID, the host country, and the contractor is required from project design through completion of the project. AID, host country, and contractor participation in a continuing review and evaluation of the project is essential for its proper execution; and

(ii) The activity is authorized under Title XII.

(2) The collaborative assistance method is fully defined and discussed in AIDAR Appendix F—Use of Collaborative Assistance Method for Title XII Activities.

(d) *Applicability.* The provisions of this subsection are applicable when the project office makes the determinations required by paragraph (c)(1) of this section.

(e) *Determination.* In order to prepare a contract under the collaborative assistance method, the determinations in paragraph (c)(1) of this section must be made in accordance with the following procedures:

(1) The responsible project office makes a preliminary finding that an activity is authorized by Title XII and should be classed as collaborative assistance in accordance with paragraph (c)(1) of this section.

(2) Based upon this preliminary finding, the project office shall establish an evaluation panel consisting of a representative of the project office as chairman; a representative of the contracting officer; and any other representatives considered appropriate by the chairman.

(3) The evaluation panel will review the proposed project; based on the panel's findings, the chairman will make the formal, written determinations required by paragraph (c)(1) of this section.

(f) *Evaluation and selection.* (1) Competition shall be sought among eligible Title XII institutions to the maximum practicable extent; this requirement shall be deemed satisfied when a contractor is selected under the procedures of this section.

(2) The evaluation panel shall:

(i) Prepare evaluation and selection criteria;

(ii) Prepare an initial source list of eligible institutions considered qualified to perform the proposed project; and

(iii) Evaluate the list, using the evaluation criteria previously determined, for the purpose of making a written determination of the sources considered most capable of performing the project.

(3) The chairman of the evaluation panel will prepare a memorandum requesting the contracting officer to prepare a request for expressions of interest from qualified sources and setting forth:

(i) The formal determinations required by paragraph (b)(1) of this section;

(ii) The evaluation criteria which have been determined; and

(iii) The recommended source list and the rationale therefor.

(4) The contracting officer will prepare a request for an expression of interest (REI), containing sufficient information to permit an offeror to determine its interest in the project, and to discuss the project with AID representatives, if appropriate. The request for expression of interest should include a concise statement of the purpose of the project, any special conditions or qualifications considered important, a brief description of the selection procedure and evaluation criteria which will be used, the proposed contract format, and any other information considered appropriate. The REI will be issued to the sources recommended by the panel, and to others, as appropriate; it will be synopsized, as required by FAR 5.201, and it will normally allow a minimum of 60 days for preparation of an expression of interest. Guidelines for preparation of expressions of interest are contained in Attachment 1 to AIDAR Appendix F.

(5) The contracting officer will transmit all expressions of interest to the evaluation panel for evaluation and selection recommendation. The panel may conduct on site evaluations at its discretion, as part of the evaluation process.

(6) The chairman of the evaluation panel will prepare a written selection recommendation with supporting justification, recommending that negotiations be conducted with the prospective contractor(s) selected by the evaluation panel. The selection recommendation shall be transmitted to the contracting officer together with the complete official file on the project which was being maintained by the evaluation panel.

(7) The contracting officer will review the selection recommendation, obtain necessary cost and other data, and proceed to negotiate with the recommended sources.

[52 FR 6159, Mar. 2, 1987, as amended at 54 FR 28069, July 5, 1989; 55 FR 6802, Feb. 27, 1990]

PART 716—TYPES OF CONTRACTS

Subpart 716.3—Cost Reimbursement Contracts

Sec.
716.301-3 Limitations.
716.303 Cost-sharing contracts.

Subpart 716.5—Indefinite Delivery Contracts

716.501 General.

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381) as amended: E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 716.3—Cost Reimbursement Contracts

716.301-3 Limitations.

The requirement of FAR 16.301-3(c) shall not apply to negotiated amendments to cost reimbursement contracts. The original determination and findings justifying the initial use of a cost reimbursement-type contract shall be deemed applicable to all subsequent amendments to said contracts.

[51 FR 11450, Apr. 3, 1986]

716.303 Cost-sharing contracts.

(a)-(b) [Reserved]

(c) *Limitations.* In addition to the limitations specified in FAR 16.301-3, prior approval of the AID Procurement Executive (see 702.170-13) is required in order to use a cost-sharing contract with an educational institution.

[54 FR 46390, Nov. 3, 1989]

Subpart 716.5—Indefinite Delivery Contracts

716.501 General.

(a)-(b) [Reserved]

(c) AID uses a combination of contract types to obtain short term (generally up to 120 days) indefinite quantity professional services. Specifically, AID uses the time and materials payment method in its indefinite quantity contracts because it has found that fixed-price payment provisions are not suitable for the professional services being provided.

(1) Under this indefinite quantity arrangement, AID acquires services under delivery orders on the basis of—

(i) Direct labor days at specified fixed daily rates that include wages, overhead, general and administrative expenses, fringe benefits, and profit; and

(ii) Other direct costs at cost, such as travel and transportation.

Rather than using the fixed-price payment clauses for indefinite quantity contracts, these contracts will use the payment clause specified in AIDAR 752.232-7.

(2) Appropriate Government surveillance of contractor performance is required to give reasonable assurance that efficient methods and effective cost controls are being used.

(3) This combination contract may be used—

(i) Only after the contracting officer executes a determination and finding that no other type of contract is suitable; and

(ii) Only if the delivery order includes a ceiling price that the contractor exceeds at its own risk.

The contracting officer shall document the delivery order file to justify the reasons for the amount of any subsequent change in the ceiling price.

[51 FR 11450, Apr. 3, 1986]

PART 717—SPECIAL CONTRACTING METHODS

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 717.70—Pharmaceutical Products

717.700 General.

Section 606(c) of the Foreign Assistance Act bars procurement by the Government of drug and pharmaceutical products manufactured outside the United States if their manufacture involves the use of or is covered by an unexpired U.S. patent which has not been held invalid by an unappealed or unappealable court decision unless the manufacture is expressly authorized by the patent owner. Applicable policies and procedures are set forth in AID Handbook 15, AID-Financed Commodities, and in AID Handbook 1, Supplement B, Procurement Policies, Chapter 4C3.

[49 FR 13243, Apr. 3, 1984]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 719—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 719.2—Policies

Sec.
719.270 Small business policies.
719.271 Agency program direction and operation.
719.271-1 General.
719.271-2 The AID Office of Small and Disadvantaged Business Utilization (SDB).
719.271-3 AID contracting officers.
719.271-4 Heads of Contracting Activities.
719.271-5 Program/project officers.
719.271-6 Small business screening procedure.
719.271-7 Reports on procurement actions that are exempted from screening.
719.272 Small disadvantaged business policies.

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

SOURCE: 49 FR 13243, Apr. 3, 1984, unless otherwise noted.

Subpart 719.2—Policies

719.270 Small business policies.

(a) In keeping with section 602 of the Foreign Assistance Act of 1961 (22 U.S.C. 2352), as amended, AID shall, insofar as practicable and to the maximum extent consistent with the accomplishment of the purposes of said Act, assist United States small business to participate equitably in the furnishing of supplies and services for Foreign Assistance activities.

(b) It is the policy of AID to:

(1) Fully endorse and carry out the Government's small business program for placing a fair proportion of its purchases and contracts for supplies, construction (including maintenance and repair), research and development, and services (including personal, professional, and technical services) with small business, including minority small business concerns; and

(2) Increase their participation in AID procurement.

(c) In furtherance of this policy:

(1) Program/project officers shall make positive efforts (see 719.271-5) to identify potentially qualified small and minority business firms during precontract development of programs/projects and shall, with the responsible contracting officers, assure that such firms are given full opportunity to participate equitably;

(2) Small business set-asides shall be made for all contracts to be executed in AID/Washington which qualify for small business set-aside action under Part 19 of the FAR; and

(3) Consideration shall be given in appropriate cases to the award of the contract to the Small Business Administration for subcontracting to small business firms pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(d) This program shall be implemented by all AID/Washington contracting activities in order to attain these policy objectives. In accordance with 719.271, all AID/Washington direct-procurement requirements which exceed $25,000 shall be screened for small business opportunities by the Office of Small and Disadvantaged Business Utilization (SDB) except those exempted by 719.271-6(a).

(e) Where practicable and desirable, small business and minority business enterprise award goals will be established for the respective AID/Washington procuring activities to provide incentive for contracting personnel to increase awards to small firms. The goals will be set by SDB after consultation with the respective head of the contracting activity (see subsection 702.170-10).

(f) In the event of a disagreement between SDB and the contracting officer concerning: (1) A recommended set-aside, or (2) a request for modification or withdrawal of a class or individual set-aside, complete documentation of the case including the reasons for disagreement shall be transmitted within five working days to the head of the contracting activity (see 719.271-6(e)) for a decision. Procurement action shall be suspended pending a decision.

(g) The above suspension shall not apply where the contracting officer:

(1) Certifies in writing, with supporting information, that in order to protect the public interest award must be made without delay;

(2) Promptly provides a copy of said certification to SDB; and

(3) Includes a copy of the certification in the contract file.

(h) SDB shall be the Small Business Advisor and Minority Business Procurement Policy Manager for all AID/Washington procuring activities.

(i) The details on the Agency's direction and operation of the small business program are set forth in 719.271.

(j) No decision rendered, or action taken, under the coverage set forth in 719.271 shall preclude the Small Business Administration from appealing directly to the AID Administrator as provided for in Part 19 of the FAR.

(k) SDB may delegate the responsibilities set forth in 719.271-2(b) (8), (9), and (17) to the Director, Office of Management Operations with the power to redelegate. The delegation shall cover only supplies and services authorized to be procured by the Office of Management Operations. Responsibilities not delegated are reserved to SDB.

[49 FR 13243, Apr. 3, 1984, as amended at 52 FR 21058, June 4, 1987]

719.271 Agency program direction and operation.

719.271-1 General.

The purpose of this section is to prescribe responsibilities and procedures for carrying out the small business program policy set forth in 219.270, and in Part 19 of the FAR. Small Business concerns are defined in FAR Subpart 19.1; in addition, small business concerns are concerns organized for profit. Nonprofit organizations are not considered small business concerns. Small disadvantaged business enterprises are defined in FAR Subpart 19.1. Small disadvantaged business enterprises are included in the term "small business" when used in this subpart; specific reference to disadvantaged business enterprises is for added emphasis.

719.271-2 The AID Office of Small and Disadvantaged Business Utilization (SDB).

(a) SDB is responsible for administering, implementing, and coordinating the Agency's small business (including minority business enterprises) program.

(b) SDB, headed by the Director SDB, who also serves as the Minority Business Procurement Manager, shall be specifically responsible for:

(1) Developing policies, plans, and procedures for a coordinated Agency-wide small business and minority business enterprise procurement program;

(2) Advising and consulting regularly with AID/Washington procuring activities on all phases of their small business program, including, where practicable and desirable, the establishment of small business and minority business enterprise award goals;

(3) Collaborating with officials of the Small Business Administration (SBA), other Government Agencies, and private organizations on matters affecting the Agency's small business program;

(4) Developing and maintaining an A.I.D. Consultant Registry Information System (ACRIS) of bidders/offerors (annotated to identify small business and minority business enterprise firms) capable of furnishing services for use by the AID contracting activities;

(5) Cooperating with contracting officers in administering the performance of contractors subject to the Small Business and Minority Business Enterprises Subcontracting Program clauses;

(6) Developing a plan of operation designed to increase the share of contracts awarded to small business concerns, including small minority business enterprises;

(7) Establishing small business class set-aside for types and classes of items of services where appropriate;

(8) Reviewing each procurement requisition (PIO/T, PIO/C or other requisitioning document) to make certain individual or class set-asides are initiated on all suitable AID/Washington proposed contract actions in excess of

$25,000 which are subject to screening (see 719.271-6);

(9) Maintaining a program designed to:

(i) Locate capable small business sources for current and future procurements through GSA and other methods;

(ii) Utilize every source available to determine if an item is obtainable from small business; and

(iii) Develop adequate small business competition on all appropriate procurements;

(10) Taking action to assure that unnecessary qualifications, restrictive specifications, or other features (such as inadequate procurement lead time) of the programming or procurement process, which may prevent small business participation in the competitive process, are modified to permit such participation where an adequate product or service can be obtained;

(11) Recommending that portions of large planned procurements or suitable components of end items or services be purchased separately so small firms may compete;

(12) On proposed non-competitive procurements, recommending to the contracting officer that the procurement be made competitive when, in the opinion of SDB, there are small business or minority business enterprises believed competent to furnish the required goods or services, and supplying the contracting officer a list of such firms;

(13) Assisting small business concerns with individual problems;

(14) Promoting increased awareness by the technical staff of the availability of small business firms;

(15) Making available to GSA copies of solicitations when so requested;

(16) Counseling non-responsive or non-responsible small business bidders/offerors to help them participate more effectively in future solicitations; and

(17) Examining bidders lists to make certain small business firms are appropriately identified and adequately represented for both negotiated and advertised procurements.

[49 FR 13243, Apr. 3, 1984, as amended at 52 FR 21058, June 4, 1987]

719.271-3 AID contracting officers.

With respect to procurement activities within their jurisidiction, contracting officers are responsible for:

(a) Being thoroughly familiar with Part 19 of the FAR and this section dealing with the small business program;

(b) Screening abstracts of bids and other award data to determine set-aside potential for future procurements;

(c) Assuring that small business concerns and minority business enterprises are appropriately identified on source lists and abstracts of bids or proposals by an "S" and "M", respectively, or other appropriate symbol;

(d) Reviewing types and classes of items and services to determine where small business set-asides can be applied;

(e) Recommending that portions of large planned procurements of suitable components of end items or services be purchased separately so small firms may compete;

(f) Making a unilateral determination for total or partial small business set-asides in accordance with Subpart 19.5 of the Federal Acquisition Regulations;

(g) Submitting proposed procurement actions (PIO/Ts, PIO/Cs, or other requisitioning documents) for AID/Washington contracts to SDB for screening (see 719.271-6);

(h) Taking action to assure that unnecessary qualifications, restrictive specifications or other features (such as inadequate procurement lead time) of the programming or procurement process which may prevent small business participation in the competitive process are modified to permit such participation where an adequate product or service can be obtained;

(i) Prior to rendering a final decision on a proposed non-competitive procurement action, and as part of his/her findings and determinations, the contracting officer shall consider the recommendations, if any, of SDB together with the latter's list of additional sources;

(j) As appropriate, referring small business concerns, including small minority business enterprises, SDB for information and advice;

(k) Promoting increased awareness by the technical staff of the availability of small business concerns;

(l) Making available to SDB copies of solicitations when requested;

(m) Assisting SDB in counseling non-responsive or non-responsible small business bidders/offerors to help them to participate more effectively in future solicitations; and

(n) Including the Small Business and Minority Business Enterprises Subcontracting Program clauses in all contracts where required by Part 19 of the FAR.

719.271-4 Heads of Contracting Activities.

In order for the agency small business program to be effective, the active support of top management is required. The heads of the contracting activities shall be responsible for:

(a) Rendering decisions in cases resulting from non-acceptances by their contracting officers of set-aside recommendations made by SDB;

(b) Consulting with SDB in establishing small business and minority business enterprise award goals, where practicable and desirable; and

(c) Advising program/project officers of their responsibilities as set forth in 719.271-5.

719.271-5 Program/project officers.

Since the procurement process starts with the establishment of a program/project requirement, the actions of the program/project officers can affect the opportunity of small business to participate equitably; therefore, each program/project officer shall, during the formulation of programs/projects which will require contractural implementation:

(a) Consult with SDB on the availability and capabilities of small business firms to permit making a tentative set-aside determination where appropriate; and

(b) Provide sufficient procurement lead time in the program/project implementation schedule to allow potential small business participation.

719.271-6 Small business screening procedure.

(a) *General.* All AID/Washington proposed contract actions (PIO/Ts, PIO/Cs, or other requisitioning documents) in excess of $25,000 shall be screened by SDB, with the exception of:

(1) Class set-asides and those unilaterally set-aside by contracting officers (719.271-3(f));

(2) Those where the contracting officer certifies in writing that the public exigency will not permit the delay incident to screening (719.271-7(b));

(3) "Institution building" contracts (contracts for development of a counterpart capability in the host country) with educational or nonprofit institutions; or collaborative assistance contracts pursuant to AIDAR 715.613-71 and AIDAR Appendix F.

(4) Those involving the payment of tuition and fees for participant training at academic institutions; and

(5) Personal services contract requirements (see 719.270).

(b) *Preparation of Form AID 1410-14 (the Small Business/Minority Business Enterprise Procurement Review Form).* (1) The contracting officer shall prepare the subject form in an original and 3 copies and forward the original and 2 copies to SDB within one working day of receipt by the contracting activity of a procurement requisition (PIO/T, PIO/C, or other requisitioning document, such as an approved Noncapital Project Paper (PROP), which may be substituted for the PIO/T or PIO/C if required by the urgency of the procurement).

(2) The contracting officer will attach to his/her transmittal a complete copy of the procurement request and a copy of the recommended source list as furnished by the technical office and supplemented by him/her.

(3) The contracting officer shall complete blocks 2, 3, 4, 5, 9, and 10 (when appropriate) prior to submittal to SDB.

(c) *Screening of Form AID 1410-14 by SDB.* (1) SDB will screen the contracting officer's recommendations on set-aside potential, small business subcontracting opportunities, and section 8(a) subcontracting, and furnish him/

her with either a written concurrence in his/her recommendations or written counter-recommendations on the original and duplicate copy within five working days from receipt of the form from the contracting officer.

(2) SDB will complete Blocks 1, 6, 7, 8, 11, and 12 (when appropriate) prior to returning the screened form to the contracting officer.

(d) *Concurrence or rejection procedure.* (1) The contracting officer shall complete Block 13 upon receipt of the original and duplicate copy of the screened form from SDB.

(2) If the contracting officer rejects the SDB counter-recommendation, he/she shall return the original and duplicate forms with his/her written reasons for rejection to SDB within two working days.

(3) Upon receipt of the contracting officer's rejection, SDB may: (i) accept, or (ii) appeal, the rejection. In the case of acceptance of the contracting officer's rejection, SDB shall annotate Block 14 when it renders a decision and return the original form to the contracting officer within two working days.

(e) *Appeal procedure.* (1) When informal efforts fail to resolve the set-aside disagreement between the contracting officer and SDB, the latter official may appeal the contracting officer's decision to the head of the contracting activity. Such an appeal will be made within five working days after receipt of the contracting officer's rejection.

(2) In the case of an appeal, SDB will send the original and duplicate form, with the appeal noted in Block 14, directly to the head of the contracting activity with its written reasons for appealing. The contracting officer will be notified of SDB's appeal by means of a copy of the written reasons for appealing.

(3) The head of the contracting activity shall render a decision on the appeal (complete Block 15) within three working days after receipt of same and return the original to SDB and the duplicate to the contracting officer.

[49 FR 13243, Apr. 3, 1984, as amended at 52 FR 21058, June 4, 1987]

719.271-7 Reports on procurement actions that are exempted from screening.

(a) *Unilateral and class set-asides.* The contracting officer shall prepare Form AID 1410-14 as stated in 719.271-6, but forward only the duplicate copy with the documentation required by Block 5 of the form to SDB. The original will be filed in the contract file.

(1) If, upon review of the material submitted under 719.271-7(a) above, SDB concludes that it would be practicable to accomplish all or a portion of the procurement involved under section 8(a) subcontracting, it shall so advise the contracting officer in writing within five days after receipt of such material.

(2) Such advice shall be considered a counter-recommendation and shall be processed in accordance with 719.271-6 (d) and (e).

(b) *Public exigency exemption.* The contracting officer shall prepare Form AID 1410-14 as stated in 719.271-6, but forward only the duplicate copy with the documentation required by Block 5 of the form to SDB. In addition to the documentation called for in 719.271-6, the contracting officer shall furnish a copy of his/her written determination exempting the procurement from screening. The determination shall cite the pertinent facts which led to his/her decision. This exemption is not intended to be used as substitute for good procurement planning and lead-time; SDB will report abuses of this exemption to the head of the contracting activity for appropriate action in accordance with 719.271-4(c).

(c) *Institution building contract (IBC) exemption.* The contracting officer shall prepare Form AID 1410-14 as stated in 719.271-6, but forward only the duplicate copy with the documentation required by Block 5 of the form to SDB.

(d) *Personal services contract exemption.* Preparation of Form AID 1410-14 is not required for personal services contracts.

719.272 Small disadvantaged business policies.

In addition to the requirements in FAR part 19, part 726 provides for contracting and subcontracting with small disadvantaged businesses and other disadvantaged enterprises based on the provisions of section 579 of Public Law 101-167.

[55 FR 8470, Mar. 8, 1990, and 55 FR 39154, Sept. 25, 1990]

PART 722—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

Subpart 722.1—Basic Labor Policies

Sec.

722.103 Overtime.
722.103-1 Definitions.
722.103-70 Compensatory time off.
722.103-71 Policy.
722.103-72 Approvals.
722.170 Employment of third country nationals (TCN's) and cooperating country nationals (CCN's).

Subpart 722.8—Equal Employment Opportuntity

722.870-1 Introduction.
722.870-2 EEO clearance requirements.
722.870-3 Clearance procedures.

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

SOURCE: 49 FR 13246, Apr. 3, 1984, unless otherwise noted.

Subpart 722.1—Basic Labor Policies

722.103 Overtime.

722.103-1 Definitions.

722.103-70 Compensatory time off.

"Compensatory time off" means leave equal to overtime worked, which, unless otherwise authorized in a contract or approved by a contracting officer, must be taken not later than the end of the calendar month following that in which the overtime is worked.

722.103-71 Policy.

(a) Most contracts covered by this regulation call for the performance of professional or technical services overseas on a cost-reimbursement basis. The compensation for employees performing such services is normally fixed on a monthly or annual basis, and the contracts usually state minimum work week hours. It is not expected that these employees will receive additional pay, overtime or shift premiums, or compensatory time off.

(b) When the contracting officer determines it is in the best interests of the Government, specific provision may be made in contracts to permit such benefits for non-technical and non-professional employees serving overseas, subject to approvals to be required in the contract.

722.103-72 Approvals.

The contracting officer may make the determinations referred to in FAR 22.103-4.

722.170 Employment of third country nationals (TCN's) and cooperating country nationals (CCN's).

(a) *General.* It is AID policy that cooperating country nationals (CCN's) and third country nationals (TCN's), who are hired abroad for work in a cooperating country under AID-direct contracts, generally be extended the same benefits, and be subject to the same restrictions as TCN's and CCN's employed as direct hires by the AID Mission. Exceptions to this policy may be granted either by the Mission Director or the Assistant Administrator having program responsibility for the project. (TCN's and CCN's who are hired to work in the United States shall be extended benefits and subject to restrictions on the same basis as U.S. citizens who work in the United States.)

(b) *Compensation.* Compensation, including merit or promotion increases paid to TCN's and CCN's may not, without the approval of the Mission Director or the Assistant Administrator having program responsibility for the project, exceed the prevailing compensation paid to personnel performing comparable work in the cooperating country as determined by the AID Mission. Unless otherwise authorized by the Mission Director or the Assistant Administrator having program responsibility for the project, the compensation of such TCN and CCN employees shall be paid in the currency of the cooperating country.

(c) *Allowances and differentials.* TCN's and CCN's, hired abroad for work in a cooperating country, are not eligible for allowances or differentials under AID-direct contracts, unless authorized by the Mission Director or the Assistant Administrator having program responsibility for the project.

(d) *Country and security clearances.* The contractor shall insure that the necessary clearances, including security clearances, if required, have been obtained for TCN and CCN employees in accordance with any such requirements set forth in the contract or required by the AID Mission, prior to the TCN or CCN starting work under the contract.

(e) *Physical fitness.* Contractors are required to insure that prospective TCN and CCN employees are examined prior to employment to determine whether the prospective employee meets the minimum physical requirements of the position and is free from any contagious disease.

(f) *Workweek, holidays, and leave.* The workweek, holidays, and leave for TCN and CCN employees shall be the same as for all other employees of the contractor, under the terms of the contract; however, TCN and CCN employees are not eligible for home leave or military leave unless authorized by the Mission Director or the Assistant Administrator having program responsibility for the project.

(g) *Travel and transportation for TCN's and CCN's.* Travel and transportation shall be provided TCN and CCN employees on the same basis as for all other employees of the contractor, under the terms of the contract.

(h) *Household effects and motor vehicles.* AID will not provide household effects to TCN and CCN employees; such employees may ship their household effects and motor vehicles to their place of employment on the same basis as for all other employees of the contractor, under the terms of the contract unless they are residents of the cooperating country.

Subpart 722.8—Equal Employment Opportunity

722.870-1 Introduction.

Executive Order 12086 consolidated the compliance responsibility for equal employment opportunity programs, which had previously been assigned to selected, designated compliance agencies, in the Department of Labor. The Department of Labor assumed full responsibility for verification of contractor's compliance with EEO requirements. Since there is no longer a compliance officer in AID, contracting officers will now obtain verification of contractor compliance directly from the cognizant regional Office of Federal Contract Compliance Programs (OFCCP) in accordance with the procedures in 722.870-3.

722.870-2 EEO clearance requirements.

(a) *General.* AID will not award a contract to a firm or institution unless it complies with EEO requirements.

(b) *Contracts for $1,000,000 or more.* For contracts with an estimated total value over the life of the contract of $1,000,000 or more, formal verification of compliance shall be obtained from the cognizant regional OFCCP in accordance with the procedures in paragraphs (a), (b), and (d) of 722.870-3.

(c) *Contracts over $10,000 but less than $1,000,000.* Contracts with an estimated total value over the life of the contract of more than $10,000, but less than $1,000,000 do not require formal verification of compliance from

OFCCP. Compliance shall be determined in accordance with the procedures in paragraphs (a), (c), and (d) of 722.870-3.

(d) *Contract amendments.* Any amendment which increases the total estimated value of a contract to $1,000,000 or more, or any amendment which is itself $1,000,000 or more, requires formal verification of compliance from the cognizant regional OFCCP, i.e., the regional office responsible for the geographic area where the work is to be performed, in accordance with the procedures in 722.870-3(b). For other amendments, the method of verification of compliance is at the discretion of the contracting officer (see 722.870-3(c) and 722.870-3(d)(3)); formal verification is not required.

722.870-3 Clearance procedures.

(a) *General.* (1) All necessary representations and certifications (Reps and Certs) as required by FAR 22.810 is required for all AID contracts over $10,000. The (Reps and Certs) must be reviewed by the contracting officer when received to determine that they have been completed and signed as required, and are acceptable. Acceptable Reps and Certs are the first step in the EEO clearance process.

(2) If the Reps and Certs are not deemed acceptable on technical grounds (e.g. incomplete, not signed, etc.) the contracting officer must decide if they can be made acceptable within a reasonable period by corrective action on the part of the offeror, or if the fault is such that it renders the offer nonresponsive. In the first case, necessary corrective action should be taken; in the second case, negotiations with the non-responsive offeror will be terminated. If the Reps and Certs raise questions concerning EEO compliance, and this would be the basis for finding the offeror nonresponsive, the matter must be referred to OFCCP regardless of the estimated value of the contract; only OFCCP may make determination of non-compliance with EEO requirements.

(b) *Contracts for $1,000,000 or more.* Contracts and amendments with an estimated value of $1,000,000 or more must have OFCCP verification of EEO compliance before award (see 722.870-2). This verification shall be obtained by:

(1) Getting completed, signed, Reps and Certs from the offeror (see 722.870-3(a).

(2) Contacting the cognizant regional OFCCP for verification of EEO compliance.

(i) OFCCP may require 30 days lead time for verification if a compliance study is required. This should be considered in the procurement planning process.

(ii) The contracting officer may make initial inquiry to OFCCP by telephone, and telephone verification of EEO compliance may be used in making an award; however, the inquiry and verification must be confirmed in writing.

(iii) The following information is normally required by OFCCP:

(A) The offeror's full name and address;

(B) Name, title, address, and telephone number of a contact person for the prospective contractor;

(C) A description of the type of organization (university, nonprofit, etc.) and its ownership (private, foreign, state, etc.).

(D) Names and addresses of organizations in joint venture (if any); names and addresses of subcontractors (if any).

(E) Type of procurement (new contract—RFP or IFB, amendment, etc.) and estimated dollar amount, and term.

(F) Copy of approved Reps and Certs. In the initial contact with OFCCP, the contracting officer and OFCCP should mutually determine what information is to be included in the written verification request. In the event that OFCCP reports that the offeror is not in compliance, negotiations with the offeror shall be terminated.

(c) *Contracts over $10,000, but less than $1,000,000.* Contracts and amendments within this range do not require formal verification by OFCCP (see 722.870-2). The method used to verify compliance is at the discretion of the contracting officer. The contracting officer may rely on the documentation submitted by the offeror (the Reps and Certs—see 722.870-3(a)), unless he or she is aware of some reason to doubt the documentation submitted. In case of doubt, then an informal check with OFCCP should be made. In the event that evidence of non-compliance is developed, the contracting officer must contact OFCCP for confirmation of EEO status; only OFCCP may determine non-compliance with EEO requirements. If OFCCP confirms non-compliance, negotiations with the offeror or contractor shall be terminated.

(d) *Documentation for the contract file.* (1) Every contract file must contain completed signed Reps and Certs. The file must clearly show that these documents have been reviewed and accepted by the contracting officer. If the Reps and Certs or O/S Team Agreement were revised to make them acceptable (see 722.870-3(a)), the file must show what changes were required and certify that the changes were made.

(2) For contracts or amendments of $1,000,000 or more, the file must contain:

(i) A record of the initial contact with OFCCP, specifying the name, address, and telephone number of the person contacted, a summary of the information presented, and the advice given by OFCCP;

(ii) A copy of the written follow-up request for EEO compliance verification to OFCCP; and

(iii) A copy of the compliance verification from OFCCP.

(3) For contracts or amendments over $10,000 but less than $1,000,000, the file must contain a memorandum from the contracting officer stating that the contractor is considered in compliance with EEO requirements, and giving the basis for this statement (see 722.870-3(c)).

(4) Documentation in the event of non-compliance. In the event that OFCCP determines that a prospective contractor is not in compliance, a copy of OFCCP's written determination, and a summary of resultant action taken (termination of negotiations, notification of offeror and project officer, negotiation with next offeror in competitive range, resolicitation, etc.) will be placed in the contract file for any contract which may result, together with other records related to unsuccessful offers, and retained for at least six months following award.

PART 724—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 724.1—Protection of Individual Privacy

Sec.
724.170 Protection of individual privacy.

Subpart 724.2—Freedom of Information Act

724.202 Policy.

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

SOURCE: 49 FR 13248, Apr. 3, 1984, unless otherwise noted.

Subpart 724.1—Protection of Individual Privacy

724.170 Protection of individual privacy.

The Privacy Act of 1974 is implemented in FAR Subpart 24.1 which summarizes statutory and regulatory requirements, and specifies procedures, notification requirements, and contract clauses.

Subpart 724.2—Freedom of Information Act

724.202 Policy.

The Agency for International Development's policies concerning implementation of the Freedom of Information Act are codified in 22 CFR Part 212 (AID Regulation 12).

PART 725—FOREIGN ACQUISITION

Subpart 725.1—Buy American Act—Supplies

Sec.
725.170 Exceptions for Foreign Assistance Act functions.

Subpart 725.4—Purchases Under the Trade Agreement Act of 1979

725.403 Exceptions.

Subpart 725.70—Source, Origin, and Nationality

725.701 General.
725.702 Designation of authorized geographic code.
725.703 Contractor employees.
725.704 Contract clause—source and nationality requirements.
725.705 Local cost financing—authorization and contract clause.
725.706 Geographic source waivers.

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

SOURCE: 49 FR 13248, Apr. 3, 1984, unless otherwise noted.

Subpart 725.1—Buy American Act—Supplies

725.170 Exceptions for Foreign Assistance Act functions.

In addition to the exception stated in FAR 25.102 for purchases for use outside the United States, there is an exception for economic assistance functions performed under authority of the Foreign Assistance Act. This exception is stated in Executive Order 11223, dated May 12, 1965 (30 FR 6635). U.S. procurement restrictions are applied by AID, however, as shown elsewhere in this part. These restrictions are generally tighter than the Buy American Act. As a general rule, the tighter AID restrictions will be used. In the case of certain procurements for use within the United States, the Buy American provision may be used instead in the interest of uniformity among Federal Agencies procuring for domestic use.

Subpart 725.4—Purchases Under the Trade Agreement Act of 1979

725.403 Exceptions.

FAR subpart 25.4 establishes procedures for purchases under the Trade Agreement Act of 1979. Under the General Agreement on Tariffs and Trade, the Agreement on Government Procurement exempts tied—aid procurements from the requirements of the General Agreement. Under this authority AID is not required to follow the procedures in FAR subpart 25.4 for any contract implementing a foreign assistance project. The procurement of goods or services for the direct benefit and use of AID, rather than for implementation of an assistance project, would be subject to the procedures in FAR subpart 25.4, unless otherwise exempted by one of the exceptions specified in FAR subpart 25.4.

Subpart 725.70—Source, Origin, and Nationality

725.701 General.

AID policies regarding source, origin, and nationality requirements for AID contractors and subcontractors are established in AID Handbook 1, Supplement B, primarily in Chapter 5. Additional related policies are set forth in Chapters 4, 7, and 18. These policies as they apply to subcontracts and purchases under AID-direct contracts have been incorporated into the contract clauses referenced in 725.704 and 725.705 of this subpart.

725.702 Designation of authorized geographic code.

(a) The authorized geographic code or codes for an AID contract shall be specified in the Schedule of each contract and shown on its cover page. If no geographic code is specified, the authorized code will be deemed to be Geographic Code 000, the U.S.

(b) Individual country and geographic codes are defined in Attachment A-11, Section III, of Appendix D to AID Handbook 18.

725.703 Contractor employees.

(a) Except as specifically provided in paragraph (b) of this section, there are no nationality restrictions on employees or consultants of either contractors or subcontractors providing services under an AID-financed contract, except that they must be citizens of a Geographic Code 935 country, or non-U.S. citizens lawfully admitted for permanent residence in the U.S.

(b) For AID-financed construction projects where the contract is awarded to a U.S. firm, at least half of the supervisors, and any other specified key personnel, working at the project site must be U.S. citizens or permanent legal residents of the United States. Exceptions may be authorized by the Mission Director in writing if special circumstances make compliance impractical.

[51 FR 34985, Oct. 1, 1986]

725.704 Contract clause—source and nationality requirements.

The clause in 752.7004 is required in all AID direct contracts.

[49 FR 13248, Apr. 3, 1984, as amended at 51 FR 11450, Apr. 3, 1986]

725.705 Local cost financing—authorization and contract clause.

(a) Local cost financing requires specific authorization under Chapter 18 of AID Handbook 1, Supplement B. The authorization must specify the U.S. Dollar amount which may be used for local cost financing.

(b) When local cost financing has been authorized, the contract must contain the clause specified in 752.7017.

725.706 Geographic source waivers.

(a) Authority to waive source, origin, nationality, and transportation services requirements is set forth in Delegation of Authority No. 405 (AID Handbook 5). Additional guidance is available in Chapters 5, 7, and 18 of Supplement B to AID Handbook 1.

(b) The contracting officer shall insert the authorized geographic code based on an approved geographic source waiver in the Schedule of the contract as provided for in 725.702. In addition, the contracting officer shall place a copy of any approved geographic source waiver in the official contract file.

[49 FR 13248, Apr. 3, 1984, as amended at 52 FR 4144, Feb. 10, 1987]

PART 726—OTHER SOCIOECONOMIC PROGRAMS

Sec.

726.000 Scope of part.

Subpart 726.1—General

726.101 Definitions.
726.102 Policy.
726.103 Determination to use other than full and open competition.
726.104 Exceptions.

Subpart 726.2—Determination of Status

726.201 Determination of status as a small disadvantaged business.

Subpart 726.3—Subcontracting Requirement

726.301 Subcontracting with disadvantaged enterprises.

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O.12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

SOURCE: 55 FR 8470, Mar. 8, 1990, and 55 FR 39154, Sept. 25, 1990, unless otherwise noted.

726.000 Scope of part.

This part supplements FAR part 19 and implements certain provisions of section 579 of the Foreign Operations

Export Financing, and Related Programs Appropriations Act, 1990 (Pub. L. 101-167, 103 Stat. 1195, 1248-49 [1989]), which provides in general that not less than ten percent of the aggregate amount made available for fiscal year 1990 for development assistance and for assistance for famine recovery and development in Africa shall be made available to disadvantaged enterprises. See part 705 and part 706 for additional provisions implementing section 579 with respect to publicizing contract actions and using other than full and open competition.

Subpart 726.1—General

726.101 Definitions.

Disadvantaged enterprises means U.S. organizations or individuals that are:

(a) Business concerns (as defined in FAR 19.001) owned and controlled by socially and economically disadvantaged individuals;

(b) Institutions designated by the Secretary of Education, pursuant to 34 CFR 608.2, as historically black colleges and universities;

(c) Colleges or universities having a student body in which more than 40 percent of the students are Hispanic American; or

(d) Private voluntary organizations which are controlled by individuals who are socially and economically disadvantaged.

Controlled by socially and economically disadvantaged individuals means management and daily business are controlled by one or more such individuals.

Owned by socially and economically disadvantaged individuals means at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock owned by one or more socially and economically disadvantaged individuals.

Economically disadvantaged individuals means socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others who are not socially disadvantaged. An individual shall not be considered an economically disadvantaged individual if his or her personal net worth exceeds $750,000, excluding the equity in his or her primary personal residence and his or her ownership interest in the disadvantaged enterprise in question.

Small disadvantaged business means any small business concern (as defined in FAR 19.001) that is owned and controlled by socially and economically disadvantaged individuals as the terms are defined in this 726.101.

Socially disadvantaged individuals means individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. Women and any individual who certifies that he or she is a Black American, Hispanic American, Native American (as defined in FAR 19.001), Asian-Pacific American (as defined in FAR 19.001), or a Subcontinent-Asian American (as defined in FAR 19.001) shall be presumed to be a socially disadvantaged individual.

726.102 Policy.

AID promotes participation in its projects by disadvantaged enterprises. In order to achieve the goals in section 579(a) of Public Law 101-167, contracts which are to be funded from amounts made available for fiscal year 1990 for development assistance and for famine recovery and development in Africa are subject to the following policies:

(a) Authority in section 8(a) of the Small Business Act (15 U.S.C. 637(a)) shall be used to the maximum practicable extent;

(b) Other than full and open competition in contracting with small disadvantaged businesses shall be authorized in accordance with 706.302-71;

(c) Subcontracting with disadvantaged enterprises shall be carried out in accordance with subpart 726.3;

(d) In accordance with 705.207, the Office of Small and Disadvantaged Business Utilization (OSDBU) shall be notified at least seven business days before publicizing a proposed procurement in excess of $100,000.

726.103 Determination to use other than full and open competition.

The determinations required in order to use the authority under 706.302-71 for other than full and open competition shall be made by the contracting officer in consultation with the Director of OSDBU. In the event of a disagreement between the contracting officer and the Director of OSDBU, the head of the contracting activity shall make the final determination.

726.104 Exceptions.

Exceptions.

The notification requirement in 705.207 and the subcontracting requirement in 726.301 are based on statutory requirement and may not be deviated from under the provisions of subpart 701.4. Pursuant to section 579(b) of Public Law 101-167, the Administrator or designee may determine that these requirements do not apply to a particular contract or category of contracts. The Procurement Executive has been designated to make such determinations. One such determination concerning subcontracting is set out in 726.301(b).

Subpart 726.2—Determination of Status

726.201 Determination of status as a small disadvantaged business.

(a) To be eligible for an award under AIDAR 706.302-71 providing for other than full and open competition, the contractor must qualify as a small disadvantaged business, as defined in 726.101, as of both the date of submission of its offer and the date of contract award. The contracting officer shall insert the provision at 752.226-1 in any solicitation or contract to be awarded under the provisions of 706.302-71.

(b) The contracting officer shall accept an offeror's representations and certifications under the provisions referenced above that it is a small disadvantaged business unless he or she determines otherwise based on information contained in a challenge of the offeror's status by the Small Business Administration or another offeror, or otherwise available to the contracting officer.

Subpart 726.3—Subcontracting Requirement

726.301 Subcontracting with disadvantaged enterprises.

(a) In addition to the requirements in FAR subpart 19.7, any new contract or modification which constitutes new procurement (except for a contract or modification with a disadvantaged enterprise as defined in 726.101) with respect to which more than $500,000 is to be funded with amounts made available for fiscal year 1990 for development assistance or for assistance for famine recovery and development in Africa shall contain a provision requiring that not less than ten percent of the dollar value of the contract must be subcontracted to disadvantaged entities.

(b) This requirement does not apply when the contracting officer, with the concurrence of the Director of OSDBU, certifies there is no realistic expectation of U.S. subcontracting opportunities and so documents the file. If the contracting officer and the Director of OSDBU do not agree, the determination will be made by the head of the contracting activity. See 726.104 for guidance on other potential exceptions.

(c) The contracting officer shall insert the clause in 752.226-2 in any solicitation or contract as provided in paragraph (a) of this section, unless exempted in accordance with the provisions of paragraph (b) of this section.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 728—BONDS AND INSURANCE

Subpart 728.1—Bonds

Sec.
728.105-1 Advance payment bonds.

Subpart 728.3—Insurance

728.305-70 Overseas worker's compensation and war-hazard insurance—waivers and A.I.D. insurance coverage.
728.307-2 Liability.
728.309 Contract clause for worker's compensation insurance.
728.313 Contract clauses for insurance of transportation or transportation-related services.

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56373; 3 CFR 1979 Comp., p. 435.

SOURCE: 49 FR 13249, Apr. 3, 1984, unless otherwise noted.

Subpart 728.1—Bonds

728.105-1 Advance payment bonds.

(a) Generally, advance payment bonds will not be required in connection with AID contracts containing an advance payment provision. In lieu thereof, contracting officers will follow procedures set forth in FAR 32.409-3.

(b) Whenever a contracting officer considers that an advance payment bond is necessary, the contracting officer will: (1) Establish a bond penalty that will adequately protect interests of the Government, (2) use the AID Advance Payment Bond format, (3) place bond with a surety currently approved by the U.S. Treasury Department according to the latest Treasury Department Circular 570, (4) stipulate that the cost of the bond shall not exceed a rate of $7.50 per $1,000 per annum based on the penalty of the bond, without the prior written approval of the Planning, Policy and Evaluation Staff (MS/PPE).

(c) Where the surety's obligation under an advance payment bond covers all advances made to the contractor during the term of the contract, no release should be issued to the surety until all advances made and to be made under the contract have been fully liquidated in accordance with the provisions of the contract, such as no-pay vouchers, reports of expenditures, or by refund. Where the surety's obligation under the bond is limited to advances made during a specified period of time, no release should be issued to the surety until all advances made and to be made during the specified period have been liquidated as aforesaid.

[49 FR 13249, Apr. 3, 1984, as amended at 50 FR 50302, Dec. 10, 1985; 55 FR 6802, Feb. 27, 1990]

Subpart 728.3—Insurance

728.305-70 Overseas worker's compensation and war-hazard insurance—waivers and A.I.D. insurance coverage.

(a) Upon the recommendation of the AID Administrator, the Secretary of Labor may waive the applicability of the DBA with respect to any contract, subcontract, or subordinate contract, work location, or classification of employees. Either the contractor or AID can request a waiver from coverage. Such a waiver can apply to any employees who are not U.S. citizens, not residents of, or not hired in the United States. Waivers requested by the contractor are submitted to the contracting officer for approval and further submission to the Department of Labor, which grants the waiver. Application for a waiver is submitted on Labor Department Form BEC 565. AID has a number of blanket waivers already in effect for certain countries that are applicable to its direct contracts with contractors performing in such countries. Where such waivers are granted from coverage under the DBA, the waiver is conditioned on providing other workmen's compensation coverage to employees to which the waiver applies. Usually this takes the form of securing workmen's compensation coverage of the country where work will be performed or of the country of the employee's nationality, whichever offers greater benefits. The Department of Labor has granted partial blanket waivers of Defense Base Act coverage for the countries listed below. The waivers are applicable to AID-financed contracts performed in the listed countries, and are subject to two conditions:

(1) Employees hired in the United States by the contractor, and citizens or residents of the United States are to be provided Defense Base Act insurance coverage:

(2) Waived employees (i.e., employees who are neither U.S. citizens nor U.S. resident aliens, and who were hired outside the United States) will be provided worker's compensation benefits as required by the laws of the country in which they are working or the laws of their native country, whichever offers greater benefits. Countries for which waivers are in effect are:

1. Afghanistan
2. Antigua
3. Bahamas
4. Bangladesh
5. Barbados
6. Belize
7. Benin
8. Bolivia
9. Botswana
10. Brazil
11. Burkina Faso
12. Burundi
13. Cameroon
14. Cape Verde
15. Chad
16. Chile
17. Colombia
18. Costa Rica
19. Djibouti
20. Dominica
21. Dominican Republic
22. Ecuador
23. Egypt
24. El Salvador
25. Equitorial Guinea
26. Ethiopia
27. Fiji
28. Gambia
29. Ghana
30. Grenada
31. Guatemala
32. Guinea
33. Guinea-Bissau
34. Guyana
35. Haiti
36. Honduras
37. India
38. Indonesia
39. Israel
40. Italy
41. Ivory Coast
42. Jamaica
43. Jordan
44. Kenya
45. Korea
46. Lebanon
47. Lesotho
48. Liberia
49. Madagascar
50. Malawi
51. Mali
52. Mauritania
53. Mauritius
54. Mexico
55. Morocco
56. Mozambique
57. Nepal
58. New Caledonia
59. Nicaragua
60. Niger
61. Nigeria
62. Oman
63. Pakistan
64. Panama
65. Papua New Guinea
66. Paraguay
67. Peru
68. Philippines
69. Portugal
70. Rwanda
71. St. Christopher & Nevis
72. St. Lucia
73. St. Vincent
74. Senegal
75. Sechelles
76. Sierra Leone
77. Sinai Support Mission
78. Somalia
79. South Africa
80. Sri Lanka
81. Sudan
82. Swaziland
83. Syria
84. Tanzania
85. Thailand
86. Togo
87. Tonga
88. Tunisia
89. Turkey
90. Uganda
91. Uruguay
92. Western Samoa
93. Yemen Arab Republic
94. Zaire
95. Zambia
96. Zimbabwe

(b) To assist contractors in securing insurance at minimal rates for the workmen's compensation insurance required under the DBA, and to facilitate meeting insurance requirements for such coverage, AID, after open and competitive negotiation, has entered into a contract with an insurance carrier to provide such coverage at a specified rate. The terms of this contract require the insurance carrier to provide coverage, and the contractor to make payments to and handle its claims with that insurance carrier. Contracting officers are responsible for explaining and advising contractors of the details of securing such insurance.

[49 FR 13249, Apr. 3, 1984, as amended at 52 FR 4144, Feb. 10, 1987. Redesignated at 53 FR 50630, Dec. 16, 1988, and amended at 54 FR 16122, Apr. 21, 1989]

728.307-2 Liability.

(a)-(b) [Reserved]

(c) *Automobile liability.* In order to ensure that private automobiles used by contractor employees stationed overseas under an A.I.D. contract are properly insured, A.I.D. has established minimum required coverages as a supplement to the FAR clause at 52.228-7. This supplemental coverage is specified in AIDAR 752.228-7, and is to be used in all A.I.D.-direct contracts involving performance overseas.

[53 FR 50630, Dec. 16, 1988]

728.309 Contract clause for worker's compensation insurance.

(a) Because of the volume of projects performed overseas resulting in contracts which require worker's compensation insurance, A.I.D. has contracted with an insurance carrier to provide the required insurance for all A.I.D. contractors. It is therefore necessary to supplement the FAR clause at 52.228-3 with the additional coverage specified in AIDAR 752.228-3. The coverage specified in AIDAR 752.228-3 shall be used in addition to the coverage specified in FAR 52.228-3 in all A.I.D.-direct contracts involving performance overseas.

[53 FR 50630, Dec. 16, 1988]

728.313 Contract clauses for insurance of transportation or transportation-related services.

(a) A.I.D. is required by law to include language in all its direct contracts and subcontracts ensuring that all U.S. marine insurance companies have a fair opportunity to bid for marine insurance when such insurance is necessary or appropriate under the contract. A.I.D. has therefore established a supplementary preface to the clause at FAR 52.228-9. This supplementary preface is set forth in AIDAR 752.228-9, and is required for use in any A.I.D.-direct contract where marine insurance is necessary or appropriate.

[53 FR 50630, Dec. 16, 1988]

PART 731—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 731.1—Applicability

Sec.
731.109 Advance agreements.

Subpart 731.2—Contracts With Commercial Organizations

731.205-6 Compensation for personal services.
731.205-46 Travel costs.

Sec.

Subpart 731.3—Contracts With Educational Institutions

731.370 Predetermined fixed rates for indirect costs.
731.371 Compensation for personal services.

Subpart 731.7—Contracts With Nonprofit Organizations

731.770 OMB Circular A-122; cost principles for nonprofit organizations; AID implementation.
731.771 Bid and proposal costs.
731.772 Compensation for personal services.
731.773 Independent research and development costs.

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

SOURCE: 49 FR 13250, Apr. 3, 1984, unless otherwise noted.

Subpart 731.1—Applicability

731.109 Advance agreements.

Advance agreements on selected costs may be negotiated with AID contractors by the Overhead and Special Cost and Contract Close-Out Branch, Office of Procurement. Such advance understandings will be applicable to all AID contracts with that contractor.

[49 FR 13250, Apr. 3, 1984, as amended at 50 FR 50302, Dec. 10, 1985; 51 FR 20651, June 6, 1986]

Subpart 731.2—Contracts With Commercial Organizations

731.205-6 Compensation for personal services.

(a) *General.* (1) Specific limitations on compensation for personal services, including fringe benefits, may be spelled out or incorporated by reference in AID contracts. Where the provisions of the contract are inconsistent with this section, such provisions will govern.

(2) Direct compensation of personnel is reimbursable in accordance with

FAR 31.205-6, AIDAR 731.205-6, and the contractor's established policies and procedures. The contractor's policies, procedures and practices shall be the same as used in its other contracts with the U.S. Government, and shall have been accepted by the U.S. Government agency assigned primary audit responsibility for the contractor. Such policies, procedures and practices shall be preserved and made available as part of the contractor's records which are required to be preserved and made available by the "Examination of Records by the Comptroller General" and "Audit" clauses of this contract.

(3) Overseas Recruitment Incentive. (The term "employee", as used in this paragraph, means an employee who is a U.S. citizen or resident alien.) (i) If a contractor employee serving overseas under a contract does not qualify for the exemption for overseas income provided under section 911 of the U.S. Internal Revenue Code (26 U.S.C. 911), such employee is eligible to receive an overseas recruitment incentive (ORI), to the extent the ORI: is authorized by the contractor's normal policy and practice; is deemed necessary by the contractor to recruit and retain qualified employees for overseas services; and does not exceed 10% of the base salary of the employee from date of arrival at overseas post to begin assignment to date of departure from post at the end of assignment. ORI is to be paid as a single payment at the end of the employee's tour of duty overseas. The Contractor shall take all reasonable and prudent steps to ensure that ORI is not paid to any employee who has received the IRS section 911 exemption.

(ii) This supplement will not be paid in an amount which would cause the employee's salary to exceed the maximum payable annual or daily rate for a Foreign Service Officer Class FS-1 in effect at the time the base salary was earned. The FS-1 rate is set forth in the payment schedule of the Uniform State/AID/USIA Regulations, as from time to time amended. Any exception to the FS-1 limitation must be approved by the Contracting Officer.

(iii) In the event that an employee subsequently receives a section 911 exclusion for any part of the base salary upon which this supplement has been paid, such supplement or appropriate portion thereof shall be reimbursed by the contractor to AID with interest. The interest shall be calculated at the average U.S. Treasury rate in effect for the period that the contractor or his employee had the funds. Neither the contractor's nor a subcontractor's inability to collect refunds from eligible employees shall be used as a basis to excuse subsequent refunds by the contractor to AID.

(4) The workweek for the contractor's overseas employees should take into consideration local practices and, in collaboration with the Mission Director, shall be established to coincide with the workweek for those employees of the AID Mission and/or the cooperating country.

(b) *Salaries and wages.* (1) Salaries and wages exclude overseas differential and other allowances associated with overseas service but include payments for personal services (including fees and honoraria) computed on a daily rate or other time basis different from an annual rate. Daily rates of compensation are computed on the basis of a 260-day work year made up of 5-day (8 hour) work weeks.

(2) Any compensation (i.e., the employee's or consultant's base annual salary plus overseas recruitment incentive, if any) which exceeds the maximum payable annual or daily rate for a Foreign Service Officer Class FS-1 as set forth in the payment schedule of the Uniform State/AID/USIA Regulations, as from time to time amended, will be reimbursed only with the written approval of the contracting officer. Contracting officer approval of salaries in excess of the maximum payable rate for a Foreign Service Officer Class FS-1 will be based upon a memorandum from the technical office and approved by the Assistant Administrator or Mission Director having program responsibility for the project in support of which the contract is written. The technical office is responsible for evaluating the reasonableness of the proposed salary, taking into account such factors as the degree of technical competence required, the scope of supervisory re-

sponsibilities involved, and the relationship of the proposed salary level to the contractor's customary salary level, and other pertinent information. Copies of all memoranda approved by the Assistant Administrator or Mission Director will be furnished to the Procurement Support Division, Office of Procurement.

(3) For policies on compensation of third country national or cooperating country national contractor employees, see 722.170.

(c) *Fringe benefits.* AID contracts spell out rules and principles governing reimbursement of specific fringe benefits related to overseas service, including leave, holidays, differential, allowances, travel, transportation, and similar costs. The contract provisions are set forth in Part 752.

[49 FR 13250, Apr. 3, 1984, as amended at 49 FR 33667, Aug. 24, 1984; 50 FR 50302, Dec. 10, 1985; 51 FR 20651, June 6, 1986; 52 FR 21058, June 4, 1987; 53 FR 50631, Dec. 16, 1988; 54 FR 46390, Nov. 3, 1989]

731.205-46 Travel costs.

International travel costs are allowable only when the travel has received the specific prior approval of the contracting officer. For purposes of this provision, international travel is defined as any travel outside of the United States, or its territories and possessions.

Subpart 731.3—Contracts With Educational Institutions

731.370 Predetermined fixed rates for indirect costs.

Section 635(k) of the Foreign Assistance Act of 1961, as amended, authorizes AID to use predetermined fixed rates in determining the indirect costs applicable under contracts with educational institutions.

731.371 Compensation for personal services.

(a) *Salary.* (1) Specific limitations on compensation for personal services are set forth in the contract clauses specified in subsection 752.7007. Contracting Officer approval of salaries in excess of the maximum payable annual or daily rate for a Foreign Service Officer Class FS-1, as set forth in the Uniform State/AID/USIA Regulation, as from time to time amended, will be based upon a memorandum from the technical office and approved by the Assistant Administrator or Mission Director having program responsibility for the project in support of which the contract is written. The technical office is responsible for evaluating the reasonableness of the proposed salary, taking into account such factors as the degree of technical competence required, the scope of supervisory responsibilities involved, the relationship of the proposed salary level to the contractor's customary salary level, and other pertinent information. Copies of all memoranda approved by the Assistant Administrator or Mission Director will be furnished to the Procurement Support Division, Office of Procurement.

(2) In considering consulting income as a factor when determining allowable salary for service under a contract:

(i) For faculty members working under annual appointments, salary for service under the contract may include the employee's on-campus salary plus "consulting income" (that is, income from employment other than the employee's regular on-campus appointment, excluding business or other activities not connected with the employee's profession) earned during the year preceding employment under the contract.

(ii) For faculty members working under academic year appointments, salary for service under the contract may include the employee's on-campus academic year salary plus "consulting income" as defined above earned during the year preceding employment under the contract, or salary for service under the contract may be derived by annualizing the academic year salary (in which case "consulting income" may not be included).

(b) For policies on compensation of third country national or cooperating country national contractor employees, see 722.170.

(c) Overseas Recruitment Incentive. (The term "employee", as used in this paragraph, means an employee who is a U.S. citizen or resident alien.) (1) If a contractor employee serving overseas under a contract does not qualify for the exemption for overseas income provided under section 911 of the U.S. Internal Revenue Code (26 U.S.C. 911), such employee is eligible to receive an overseas recruitment incentive (ORI), to the extent the ORI: is authorized by the contractor's normal policy and practice; is deemed necessary by the contractor to recruit and retain qualified employees for overseas service; and does not exceed 10% of the base salary of the employee from date of arrival at overseas post to begin assignment to date of departure from post at the end of assignment. ORI is to be paid as a single payment at the end of the employee tour of duty overseas. The contractor shall take all reasonable and prudent steps to ensure that ORI is not paid to any employee who has received the IRS section 911 exemption.

(2) This supplement will not be paid in an amount which would cause the employee's salary to exceed the maximum payable annual or daily rate for a Foreign Service Officer Class FS-1 in effect at the time the base salary was earned. The FS-1 rate is set forth in the payment schedule of the Uniform State/AID/USIA Regulations, as from time to time amended. Any exception to the FS-1 limitation must be approved by the Contracting Officer.

(3) In the event that an employee subsequently receives a section 911 exclusion for any part of the base salary upon which this supplement has been paid, such supplement or appropriate portion thereof shall be reimbursed by the contractor to AID with interest. The interest shall be calculated at the average U.S. Treasury rate in effect for the period that the contractor or his employee had the funds. Neither the contractor's nor a subcontractor's inability to collect refunds from eligible employees shall be used as a basis to excuse subsequent refunds by the contractor to AID.

(d) The workweek for the contractor's overseas employees should take into consideration local practices and, in collaboration with the Mission Director, shall be established to coincide with the workweek for those employees of the AID Mission and/or the cooperating country.

[49 FR 13250, Apr. 3, 1984, as amended at 49 FR 33668, Aug. 24, 1984; 50 FR 50302, Dec. 10, 1985; 51 FR 20651, June 6, 1986; 52 FR 21058, June 4, 1987; 53 FR 50631, Dec. 16, 1988; 54 FR 46390, Nov. 3, 1989]

Subpart 731.7—Contracts With Nonprofit Organizations

731.770 OMB Circular A-122, cost principles for nonprofit organizations; AID implementation.

(a) Paragraph 6 of the transmittal letter for OMB Circular A-122 specifies that "Agencies shall designate a liaison official to serve as the agency representative on matters relating to the implementation of this Circular." The Director, Office of Procurement, has been so designated. The Overhead and Special Cost and Contract Close-Out Branch, Office of Procurement (OCC) provides staff assistance to the Director concerning OMB Circular A-122. OSC is also responsible for obtaining cognizance under the criteria in the transmittal letter for OMB Circular A-122; for liaison with other cognizant agencies; for authorizing exclusion of OMB Circular A-122 coverage for a particular nonprofit organization pursuant to paragraph 5 of the OMB Circular A-122 transmittal letter; and for advice and assistance in applying OMB Circular A-122 cost principles.

(b) Paragraph 4b of the OMB Circular A-122 transmittal letter contains a definition of "prior approval" as follows:

> Prior approval means securing the awarding agency's permission in advance to incur costs for those items that are designated as requiring prior approval by OMB Circular

> A-122. Generally, this permission will be in writing. Where an item of cost requiring prior approval is specified in the budget of an award, approval of the budget constitute approval of that cost.

Consequently, an award containing a budget constitutes prior approval of the direct cost item in the budget, unless otherwise annotated. Accordingly, award budgets should be appropriately annotated substantially as follows:

> Inclusion of any cost in the line item budget of this award does not obviate the requirement for prior approval of cost items designated as requiring prior approval by OMB Circular A-122 ; or
>
> In accordance with the requirements to OMB Circular No. A-122, approval is granted to incur costs for (name specific item or items) which are included in the budget of this award.

[49 FR 13250, Apr. 3, 1984, as amended at 50 FR 50302, Dec. 10, 1985; 51 FR 20651, June 6, 1986]

731.771 Bid and proposal costs.

Pending the establishment of Government-wide principles in Attachment B of OMB Circular A-122, AID will treat bid and proposal costs as follows:

(a) Bid and proposal costs are the costs of preparing bids, proposals, and applications for potential activities such as Government and non-Government grants, contracts and other agreements, including the development of scientific, cost, and other data needed to support such bids, proposals, and applications. Except as provided in (b) below, bid and proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs for allocation to all current activities, and no bid and proposal costs of past accounting periods will be allocable to the current period. However, if the organization's established practice is to treat bid and proposal costs by some other method, the results obtained may be accepted only if found to be reasonable and equitable.

(b) Bid and proposal costs incurred by the organization to obtain unrestricted funds are to be treated as fund raising and allocated an appropriate share of indirect costs under the conditions described in paragraph B.3 of Attachment A to OMB Circular A-122.

731.772 Compensation for personal services.

(a) It is AID policy to require prior approval by the contracting officer before reimbursing a contractor for employees compensation which exceeds the FS-1 rate, as set forth in the payment schedule of the Uniform State/AID/USIA Regulations. The contracting officer's approval will be obtained as specified in 731.205-6.

(b) For policies on compensation of third country national or cooperating country national contractor employees, see 722.170.

(c) Overseas Recruitment Incentive. (The term "employee", as used in this paragraph, means an employee who is a U.S. citizen or resident alien.) (1) If a contractor employee serving overseas under a contract does not qualify for the exemption for overseas income provided under section 911 of the U.S. Internal Revenue Code (26 U.S.C. 911), such employee is eligible to receive an overseas recruitment incentive (ORI), to the extent the ORI: is authorized by the contractor's normal policy and practice; is deemed necessary by the contractor to recruit and retain qualified employees for overseas services; and does not exceed 10% of the base salary of the employee from date of arrival at overseas post to begin assignment to date of departure from post at the end of assignment. ORI is to be paid as a single payment at the end of the employee tour of duty overseas. The contractor shall take all reasonable and prudent steps to ensure that ORI is not paid to any employee who has received the IRS secion 911 exemption.

(2) This supplement will not be paid in an amount which would cause the employee's salary to exceed the maximum payable annual or daily rate for a Foreign Service Officer Class FS-1 in effect at the time the base salary was earned. The FS-1 rate is set forth

in the payment schedule of the Uniform State/AID/USIA Regulations, as from time to time amended. Any exception to the FS-1 limitation must be approved by the Contracting Officer.

(3) In the event that an employee subsequently receives a section 911 exclusion for any part of the base salary upon which this supplement has been paid, such supplement or appropriate portion thereof shall be reimbursed by the contractor to AID with interest. The interest shall be calculated at the average U.S. Treasury rate in effect for the period that the contractor or his employee had the funds. Neither the contractor's nor the subcontractor's inability to collect refunds from eligible employees shall be used as a basis to excuse subsequent refunds by the contractor to AID.

(d) The workweek for the contractor's overseas employees should take into consideration local practices and, in collaboration with the Mission Director, shall be established to coincide with the workweek for those employees of the AID Mission and/or the cooperating country.

[49 FR 13250, Apr. 3, 1984, as amended at 49 FR 33668, Aug. 24, 1984; 50 FR 50303, Dec. 10, 1985; 53 FR 50631, Dec. 16, 1988; 54 FR 46390, Nov. 3, 1989]

731.773 Independent research and development costs.

Pending establishment of Government-wide principles in Attachment B of OMB Circular A-122, AID will apply the cost principles at FAR 31.205-18 for independent research and development costs.

PART 732—CONTRACT FINANCING

Subpart 732.4—Advance Payments

Sec.
732.401 Statutory authority.
732.402 General.
732.403 Applicability.
732.406-70 Letters of Credit (LOC)—AID procedures.
732.406-70-1 Purpose.
732.406-70-2 Circumstances for use of an LOC.
732.406-70-3 Establishing an LOC.
732.406-70-4 LOC contract clause.
732.406-70-5 Revocation of the LOC.

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 732.4—Advance Payments

SOURCE: 52 FR 4145, Feb. 10, 1987, unless otherwise noted.

732.401 Statutory authority.

(a) Sections 635(b) of the Foreign Assistance Act and Executive Order 11223, May 12, 1955, 30 FR 6635, permit the making of advance payments with respect to functions authorized by the Foreign Assistance Act. Advance payments may also be made under section 305 of the Property Act, which provides authority, not otherwise available to AID, to take a paramount lien.

(b) The Act of August 28, 1968, Pub. L. 85-804 does not apply to AID.

[49 FR 13252, Apr. 3, 1984]

732.402 General.

(a)-(d) [Reserved]

(e) All U.S. Dollar advances to profit making organizations require the approval of the Procurement Executive; all such approvals are subject to prior consultation with the A.I.D./W Controller. Interest is charged on such advances at the rate established by the Secretary of the Treasury under Pub. L. 92-41, unless waived by the Procurement Executive.

[52 FR 38097, Oct. 14, 1987]

732.403 Applicability.

References to nonprofit contracts with nonprofit educational or research institutions for experimental, research and development work include nonprofit contracts with nonprofit institutions for: (a) Technical assistance services provided to or for another country or countries, and (b) projects which concern studies, demonstrations and similar activities related to economic growth or the solution of social problems of developing countries.

[49 FR 13252, Apr. 3, 1984]

732.406-70 Letters of Credit (LOC)--AID procedures.

732.406-70-1 Purpose.

This subsection provides guidance on use of the Letter of Credit--Treasury Financial Communication System (LOC) for advance payments.

732.406-70-2 Circumstances for use of an LOC.

The LOC shall be used under the following circumstances:

(a) The contracting officer has determined that an advance payment is necessary and appropriate in accordance with this subpart, the guidance provided in Subpart 32.4 of the FAR, and Chapter 15E of AID Handbook 1, Supplement B;

(b) The agency has, or expects to have, a continuing relationship of at least one year with the recipient organization, and the annual amount required for advance financing will be at least $120,000;

(c) The Office of Financial Management, Cash Management and Payment Division (PFM/FM/CMP) agrees that the LOC payment method is appropriate; and

(d) The recipient organization's financial institution has entered into an agreement with the U.S. Treasury on the use of the LOC.

[52 FR 4145, Feb. 10, 1987, as amended at 54 FR 46390, Nov. 3, 1989]

732.406-70-3 Establishing an LOC.

(a) An LOC is established by PFM/FM/CMP under rules and procedures issued by the Treasury Department. While the contract will provide for the use of an LOC when it is justified under 732.406-70-2, the LOC is a separate agreement between the contractor and PFM/FM/CMP, acting on behalf of the AID Controller. The terms and conditions of the LOC are established by the LOC.

(b) An LOC is established upon the request of the contracting officer, with the consent of PFM/FM/CMP. The request to PFM/FM/CMP must be made in writing as early in the negotiation cycle as possible, and must include the following information:

(1) The name and address of the contractor, and the name, address, and telephone number of the contractor's representative for matters concerning establishment of the LOC.

(2) The name and address of the contractor's financial institution.

(3) The contracting officer's justification for an advance payment.

(4) The estimated total amount of the contract, and estimated frequency and amount of drawdowns against the LOC.

(5) A copy of the contractor's proposal.

(6) A copy of the PIO/T.

(7) Any other information specified by PFM/FM/CMP.

(8) Any special conditions or restrictions to be addressed in the LOC such as subadvances, special approval for subadvances, etc.

(c) PFM/FM/CMP will respond to the contracting officer's request within 5 working days of receipt by either:

(1) Concurring in the request (either as received, or with suggested changes).

(2) Requesting additional information.

(3) Rejecting the request for specified reasons.

(d) Rejection by PFM/FM/CMP may be appealed to the head of the contracting activity (HCA) and the AID Controller for a final decision.

(e) If an LOC is to be used:

(1) The contracting officer will:

(i) Prepare the appropriate findings, determination, and authorization for advance payment for signature by the HCA or his/her authorized designee.

(ii) Transmit a signed copy of the findings, determination and authorization to PFM/FM/CMP, together with a signed copy of the contract authorizing the LOC (see 732.406-70-4).

(iii) Include the LOC material provided by PFM/FM/CMP, under 732.406-70-3(e)(2)(iv), in the official contract file.

(2) PFM/FM/CMP will:

(i) Prepare the LOC in accordance with the procedures issued by Treasury and implemented by AID.

(ii) Enter into the LOC with the contractor.

(iii) Maintain the LOC in accordance with its terms, and Treasury and AID procedures and regulations.

(iv) Provide the contracting officer(s) a copy of each LOC and any other material governing its use at the time the LOC is issued or when it is amended or modified.

[52 FR 4145, Feb. 10, 1987, as amended at 54 FR 46390, Nov. 3, 1989]

732.406-70-4 LOC contract clause.

If payment is to be provided by LOC, the contract shall contain the clause in 752.232-70.

732.406-70-5 Revocation of the LOC.

After consultation with the contracting officer, PFM/FM/CMP may revoke the LOC by written notification to the contractor. A copy of any such revocation notice will immediately be provided to the cognizant contracting officer(s).

[52 FR 4145, Feb. 10, 1987, as amended at 54 FR 46390, Nov. 3, 1989]

PART 733—PROTESTS, DISPUTES, AND APPEALS

Subpart 733.70—A.I.D. Procedures for Protests

Sec.
733.7001 Scope of subpart.
733.7002 Definitions.
733.7003 Filing of protest.
733.7004 Time for filing.
733.7005 Notice of protest.
733.7006 Protests excluded from consideration.
733.7007 Withholding of award and suspension of contract performance.
733.7008 Time for and notification of the decision on the protest.

Subpart 733.71—A.I.D. Procedures for Disputes and Appeals

733.7101 Designation of Armed Services Board of Contract Appeals (ASBCA) to hear and determine appeals under A.I.D. contracts.
733.7102 Special procedures regarding contract disputes appeals promulgated pursuant to paragraph 2 of the Administrator's designation

AUTHORITY: Sec. 621. Pub. L. 87-195, 73 Stat. 445 (22 U.S.C. 2381), as amended: E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp. p. 435.

Subpart 733.70—A.I.D. Procedures for Protests

SOURCE: 54 FR 20597, May 12, 1989, unless otherwise noted.

733.7001 Scope of subpart.

A.I.D. follows the protest procedures in FAR 33.1, as implemented and supplemented by this Subpart.

733.7002 Definitions.

(a) "Interested party" is defined in FAR 33.101.

(b) "Head of the Contracting Activity" (HCA), is defined in AIDAR 702.170-10.

(c) All "days" referred to in this subpart are deemed to be "working days" of the federal government. In computing a period of time under this subpart, the time shall begin to run on the first working day after the occurrence of the event which is designated as the beginning of the time period in 733.7004(a)(2) or 733.7008(a). Time for filing any document with the Contracting Officer expires at 5:30 p.m. local time on the last day on which such filing may be made.

(d) The term "filed" means receipt of the protest submission by the Contracting Officer.

733.7003 Filing of protest.

(a) An interested party may protest to A.I.D. a solicitation issued by A.I.D. for the procurement of goods or services, or the proposed award or the award of such a contract, except that if an interested party protests a particular procurement or proposed procurement to the General Accounting Office, or initiates litigation before a court of competent jurisdiction with respect to such procurement, that procurement or proposed procurement may not be the subject of a protest to A.I.D.

(b) Protests must be in writing and addressed to the Contracting Officer for consideration by the HCA.

(c) A protest shall:

(1) Include the name, address, and telephone number of the protestor;

(2) Identify the issuing Mission or office and the solicitation and/or contract number;

(3) Set forth a detailed statement of the legal and factual grounds of protest including copies of relevant documents;

(4) Specifically request a decision by A.I.D.; and

(5) State the relief requested.

(d) An adverse decision on the protest may be made by the HCA for failure of the protest to comply with any of the requirements of this section.

733.7004 Time for filing.

(a)(1) Protests based upon alleged improprieties and/or deficiencies in a solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals.

(2) In cases other than those covered by paragraph (a)(1) of this section, protests shall be filed not later than 10 days after the basis of the protest is known or should have been known whichever is earlier.

(b) The HCA, for good cause shown, may consider a protest which is not timely filed.

733.7005 Notice of protest.

(a) When a protest against the making of an award is received and the HCA decides to withhold the award pending disposition of the protest, the offerors whose offers might become eligible for award may be notified of this protest by the Contracting Officer, and may be requested to extend the time for acceptance of their offers to avoid the need for resolicitation.

(b) Material submitted by a protestor will not be withheld from any interested party outside the government or from any government agency if the Contracting Officer decides to release such material, except to the extent that the withholding of such information is permitted or required by law or regulation.

733.7006 Protests excluded from consideration.

(a) *Contract administration.* Disputes between a contractor and A.I.D. are resolved pursuant to the disputes clause of the contract and the Contract Disputes Act of 1978.

(b) *Small business size standards and standard industrial classification.* Challenges of established size standards or the size status of particular firms, and challenges of the selected standard industrial classification are for review solely by the Small Business Administration.

(c) *Procurement under Section 8(a) of the Small Business Act.* Contracts are let under section 8(a) of the Small Business Act to the Small Business Administration solely at the discretion of the Contracting Officer, and are not subject to review.

(d) *Determinations of responsibility by the Contracting Officer.* A determination by the Contracting Officer that a bidder or offeror is or is not capable of performing a contract will not be reviewed by the HCA.

(e) *Protests filed in the General Accounting Office (GAO).* Protests filed with the GAO will not be reviewed.

(f) *Procurements funded by A.I.D. to which A.I.D. is not a party.* No protest of a procurement funded by A.I.D. shall be reviewed unless A.I.D. is a party to the acquisition agreement.

(g) *Subcontractor protests.* Subcontractor protests will not be considered.

(h) *Judicial proceedings.* Protests will not be considered when the matter involved is the subject of litigation before a court of competent jurisdiction or when the matter involved has been decided on the merits by a court of competent jurisdiction.

733.7007 Withholding of award and suspension of contract performance.

(a) When a protest is timely filed, an award shall not be made until the matter is resolved unless the HCA first determines that one of the following applies:

(1) The supplies or services to be contracted for are urgently required;

(2) Delivery or performance will be unduly delayed by failure to make award promptly;

(3) A prompt award will otherwise be advantageous to the Government.

(b) When a protest is received after award, the HCA need not decide to suspend contract performance or terminate the awarded contract unless it appears likely that an award may be invalidated and a delay in receiving the supplies or services would not be prejudicial to the Government's interest. In this event, the Contracting Officer shall consider seeking a mutual agreement with the contractor to suspend performance on a no-cost basis.

733.7008 Time for and notification of the decision on the protest.

(a) The HCA shall issue a decision on a protest within 45 days from the date a proper protest is filed unless the HCA determines that a longer period is necessary to resolve the protest, and so notifies the protestor in writing.

(b) The HCA shall notify the protestor of his or her decision in writing, which decision shall constitute the final decision of the Agency.

Subpart 733.71—A.I.D. Procedures for Disputes and Appeals

SOURCE: 53 FR 4980, Feb. 19, 1988, unless otherwise noted.

733.7101 Designation of Armed Services Board of Contract Appeals (ASBCA) to hear and determine appeals under A.I.D. contracts.

(a) The ASBCA is hereby designated the authorized representative of the Administrator of the Agency for International Development (A.I.D.) in hearing, considering, and determining as fully and finally as might the Administrator, appeals by contractors from decisions on disputed questions taken pursuant to the provisions of contracts requiring the determination of such appeals by the Administrator or his/her duly authorized representative or Board.

(b) In acting under this designation, the ASBCA will follow such rules and procedures as are or may be prescribed for the conduct of Defense Department contract appeal cases, except for the rules entitled "Forwarding of Appeals" (Rule 3) and "Duties of the Contracting Officer" (Rule 4), which subjects will be governed by procedures to be promulgated by the General Counsel of A.I.D. with approval of the Chairman of the ASBCA.

(c) The General Counsel of A.I.D. will assure representation of the interests of the Government in proceedings before the ASBCA.

(d) All officers and employees of A.I.D. will cooperate with the ASBCA and Government counsel in the processing of appeals so as to assure their speedy and just determination.

733.7102 Special procedures regarding contract disputes appeals promulgated pursuant to paragraph 2 of the Administrator's designation.

(a) The following rules will apply, in lieu of Rules 3 and 4(a) of the ASBCA, to contract dispute appeals to the Administrator of the A.I.D. or his/her authorized representative which are docketed with that Board.

(b) Rule 3 (A.I.D.)—Forwarding of Appeals. When a notice of appeal in any form has been received by the contracting officer, he/she shall endorse thereon the date of mailing (or date of receipt, if otherwise conveyed) and within 10 days shall forward said notice of appeal to the Board with a copy to the A.I.D. General Counsel in Washington, DC. Following receipt by the Board of the original notice of an appeal (whether through the contracting officer or otherwise), the contractor, the contracting officer, and the A.I.D. General Counsel will be promptly advised of its receipt, and the contractor will be furnished a copy of these rules.

(c) Rule 4 (A.I.D.). Preparation, Contents, Organization, Forwarding, and Status of Appeal File (Supersedes Rule 4, "Duties of Contracting Officer" of the ASBCA rules in effect on April 1, 1980).

(d) Duties of Contracting Officer. Within 30 days of receipt of an appeal or advice that an appeal has been filed, the contracting officer shall assemble and transmit to the A.I.D. General Counsel in Washington, DC, two copies of all documents pertinent to the appeal, including:

(1) The decision and findings of fact from which appeal is taken;

(2) The contract, including specifications and pertinent amendments, plans and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which the decision was issued;

(4) All transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered pertinent.

(e) The General Counsel will compile the appeal file from such documents, which file must contain the items enumerated in paragraphs (d) (1) through (5) of this section and will promptly, and in any event within 65 days after the appeal is docketed by the Board, transmit the appeal file to the Board. The General Counsel will notify the appellant when he/she has compiled the appeal file, will provide him/her with a list of its contents, and will afford him/her an opportunity to examine the complete file at the office of the Board and, if the General Counsel deems it appropriate, at any overseas location, for the purpose of satisfying himself/herself as to the contents, and furnishings or suggesting any additional documentation deemed pertinent to the appeal. After receipt of the foregoing file, as it may be augmented at the time of receipt, the Board will promptly advise the parties.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 734—MAJOR SYSTEM ACQUISITION

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 435.

EFFECTIVE DATE NOTE: At 55 FR 39976, Oct. 1, 1990, part 734 was revised, effective October 31, 1990. For the convenience of the user, part 734 remaining in effect until October 31, 1990 follows the text of this new part.

734.002-70 AID policy.

In order for an AID acquisition to be considered a major system acquisition it must meet the criteria of OMB Circular A-109 and FAR part 34, and must have an estimated value of $15 million or more during the first year of the contract. All major systems acquisition must be approved in advance by the Procurement Executive.

[55 FR 39976, Oct. 1, 1990]

PART 734—MAJOR SYSTEM ACQUISITION

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

734.003 Responsibilities.

AID follows the policies and procedures in OMB Circular A-109 and FAR Part 34 regarding major systems acquisitions. In order to be considered a major system an AID procurement must have an estimated value of $75 million during the first year of the contract or a $200 million life of contract estimated value.

[54 FR 37334, Sept. 8, 1989]

PART 736—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 736.6—Architect-Engineer Services

Sec.
736.602-2 Evaluation boards.
736.602-3 Evaluation board functions.
736.602-4 Selection authority.
736.602-5 Short selection procedure for procurements not to exceed $25,000.
736.603 Collecting data on and appraising firms' qualifications.
736.605 Government cost estimate for architect-engineer work.

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

SOURCE: 49 FR 13254, Apr. 3, 1984, unless otherwise noted.

Subpart 736.6—Architect-Engineer Services

736.602-2 Evaluation boards.

(a)-(b) [Reserved]

(c) Each evaluation board will include a representative of the Contracting Officer and, as appropriate, the cognizant bureau.

[54 FR 46391, Nov. 3, 1989]

736.602-3 Evaluation board functions.

Agency architect-engineer evaluation boards shall perform the following functions:

(a) Prepare a selection memorandum recommending no less than three firms which are considered most highly qualified to perform the required services for submission to the head of the contracting activity for his/her approval. This selection memorandum shall include the information specified in 736.602-3(c).

(b) In evaluating architect-engineer firms, the architect-engineer evaluation board shall apply the following criteria, other criteria established by Agency regulations, and any criteria set forth in the public notice on a particular contract:

(1) Specialized experience of the firm (including each member of joint venture or association) with the type of service required;

(2) Capacity of the firm to perform the work (including any specialized services) within the time limitations;

(3) Past record of performance on contracts with AID or other Government agencies and private industry with respect to such factors as control of costs, quality of work, and ability to meet schedules, to the extent such information is available;

(4) Ability to assign an adequate number of qualified key personnel from the organization, including a competent supervising representative having considerable experience in responsible positions on work of a similar nature;

(5) The portions of the work the architect-engineer is able to perform with its own forces when required;

(6) Ability of the architect-engineer to furnish or to obtain required materials and equipment;

(7) If the geographical or topographical aspects of the project are deemed vital, familiarity with the locality where the project is situated;

(8) Financial capacity;

(9) Responsibility of the architect-engineer under standards provided in FAR subpart 9.1. No contract may be awarded to a contractor that does not meet these standards;

(10) Volume of work previously awarded to the firm by the Agency, with the object of effecting an equitable distribution of architect-engineer contracts among qualified firms. Each architect-engineer evaluation board shall give favorable consideration, to the fullest extent practicable to the most highly qualified firms that have not had prior experience on Government projects (including small business firms and firms owned by the socially and/or economically deprived).

(c) The evaluation board shall prepare a selection memorandum for the approval of the head of the contracting activity. The selection memorandum will be signed by the board chairman and cleared by each board member. The selection memorandum shall include the following information:

(1) A listing by name of all firms reviewed by the board;

(2) A listing of the evaluation criteria applied;

(3) An analysis of the selection showing the rationale for the board's recommendation;

(4) The board's recommendation of the three most highly qualified firms, in order of preference;

(5) An independent Government cost estimate. The evaluation board shall require the project engineer to develop an independent Government estimate of the cost of the required architect-engineer services. Consideration shall be given to the estimated value of the services to be rendered the scope, complexity, and the nature of the project and the estimated costs expected to be generated by the work. The independent Government estimate shall be revised as required during negotiations to correct noted deficiencies and reflect changes in or clarification of, the scope of the work to be performed by the architect-engineer. A cost estimate based on the application of percentage factors to cost estimates of the various segments of the work involved, e.g., construction project, may be developed for comparison purposes, but such a cost estimate shall not be used as a substitute for the independent Government estimate.

736.602-4 Selection authority.

(a) The head of the contracting activity or his/her authorized designee shall review the selection memorandum and shall either approve it or return it to the board for reconsideration for specified reasons.

(b) Approval of the selection memorandum by the head of the contracting activity or his/her authorized designee shall serve as authorization for the contracting office to commence negotiation.

736.602-5 Short selection procedure for procurements not to exceed $25,000.

References to FAR 36.602-3 and 36.602-4 contained in FAR 36.602-5 shall be construed as references to 736.602-3 and 736.602-4 of this subpart.

736.603 Collecting data on and appraising firms' qualifications.

An A.I.D. Consultant Registry Information System (ACRIS) is maintained in Washington by the AID Office of Small and Disadvantaged Business Utilization. Architect-engineers wishing to perform contracts for AID should file the appropriate form with that office, as provided in section 705.002. Procurements are publicized in the *Commerce Business Daily*, as provided in FAR Part 5.

[49 FR 13254, Apr. 3, 1984, as amended at 52 FR 21059, June 4, 1987; 53 FR 50631, Dec. 16, 1988]

736.605 Government cost estimate for architect-engineer work.

See 736.602-3(c)(5).

PART 737—SERVICE CONTRACTING

Subpart 737.2—Advisory and Assistance Services

Sec.
737.205-70 Management controls.
737.206 Requesting activity responsibilities.
737.207 Contracting Officer responsibilities.
737.270 AID advisory and assistance executive.

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 435.

SOURCE: 55 FR 39976, Oct. 1, 1990, unless otherwise noted.

EFFECTIVE DATE NOTE: At 55 FR 39976, Oct. 1, 1990, part 737 was revised, effective October 31, 1990. For the convenience of the user, part 737 remaining in effect until October 31, 1990 follows the text of this new part.

Subpart 737.2—Advisory and Assistance Services

737.205-70 Management controls.

At the conclusion of each contract for advisory and assistance services, the Contracting Officer will require a written evaluation assessing the utility of deliverables and the performance of the Contractor from the cognizant project office. One copy of the evaluation will be retained in the contract file, and one copy will be sent to the AID Advisory and Assistance Executive (see 737.270). Failure to submit the required written evaluation may, at the discretion of the AID Advisory and Assistance Executive, result in refusal to process further requests for contracts for advisory and assistance services from the delinquent project office pending submission of the missing evaluation.

737.206 Requesting activity responsibilities.

(a)-(b) [Reserved]

(c) AID's written approval procedures for advisory and assistance services are as follows:

(1) A signed justification and approval, as specified in paragraph (c)(2) of this section, must accompany each request for a contract for advisory and assistance services. If the Contracting Officer determines that a requested contract is for advisory and assistance services and the required justification and approval has not been prepared, the request will be returned to the cognizant project office together with a Memorandum stating that the requested contract has been determined to be for advisory and assistance services, that justification and approval is required, and that the request for contract services will be acted upon when it is returned accompanied by the required justification and approval.

(2) The justification and approval must be clearly identified as a justification for advisory and assistance services, and must provide the following information:

(i) *Need and utilization:* State concisely the specific need for procuring the advisory and assistance service, including the objectives and the anticipated benefits for the Agency. State the estimated cost of the services, and evaluate the cost in terms of anticipated utilization of the work product.

(ii) *Review of prior work:* Briefly describe efforts made to ensure that the proposed advisory and assistance service does not, in the given circumstances, duplicate work conducted previously. Where appropriate, describe the results of an AID Data Bank search. (The AID Data Bank is located in the Bureau for Program and Policy Coordination, Center for Development Information and Evaluation, Development Information Division—PPC/CDIE/DI).

(iii) *In-house capability:* Describe the expertise needed for the service and state whether such expertise exists in AID. If it is found that the expertise does exist in AID, and is available for assignment to the work, state why AID personnel are not being assigned to the task.

(3) The justification must be approved by an officer one level above the organizational unit requesting the service but two levels above during the fourth quarter of the fiscal year. For Mission-awarded direct contracts, these guidelines regarding approval levels should be followed whenever possible; however, throughout the fiscal year, the approval officer need be no higher than the principal AID Officer at the post. Over and above these requirements, any advisory and assistance services contract of $1,000,000 or more must be approved by the AID Advisory and Assistance Executive (see 737.270).

737.207 Contracting Officer responsibilities.

(a)-(f) [Reserved]

(g) In cases where a single contract finances activities included within the definition of advisory and assistance services and activities excluded from the definition, the Contracting Officer is responsible for determining whether the primary purpose of the contract is advisory and assistance services, in which case the contract will be classed as a contract for advisory and assistance services.

737.270 AID advisory and assistance executive.

(a) As required by OMB Circular A-120, the Administrator has designated the Assistant to the Administrator for Management Services as the AID Advisory and Assistance Executive, responsible for assuring that advisory and assistance acquisitions comply with the terms of OMB Circular A-120.

(b) The AID Advisory and Assistance Executive is designated as the official who shall review and approve each request for acquisition of advisory and assistance services with a total estimated obligation of $1,000,000 or more.

Effective Date Note: Part 737 was revised at 55 FR 39976, Oct. 1, 1990, effective October 31, 1990. For the convenience of the user, the text remaining in effect until October 31, 1990, is set forth below.

PART 737—SERVICE CONTRACTING

Subpart 737.2—Consulting Services

Sec.

737.200 Scope of subpart.
737.201 Definitions.
737.270 Contracting for consulting services.
737.271 Contract data reporting.
737.272 Identifying contracts for consultant services.

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Source: 49 FR 13255, Apr. 3, 1984, unless otherwise noted.

Subpart 737.2—Consulting Services

737.200 Scope of subpart.

This subpart implements and supplements Subpart 37.2 of the FAR. It provides supplementary, AID-specific examples of activities excluded from the definition of consulting services; and establishes procedures for determination, justification, approval, and reporting of such services, as required by OMB Circular A-120 and Subpart 37.2 of the FAR. This subpart also establishes special marking requirements in 737.272 for contracts for consulting services.

737.201 Definitions.

Within the specific context of AID's operations, any consulting services for which the primary beneficiary is the host country are not considered to be consulting services.

737.270 Contracting for consulting services.

(a) In cases where a single contract finances activities included within the definition of consulting services, and activities excluded from the definition, the contracting officer is responsible for determining whether the primary purpose of the contract is consulting services, in which case the contract will be classed as a consulting services contract.

(b) A signed justification and approval, as specified in paragraph (c) of this section must accompany each request for a contract for consulting services. If the contracting officer determines that a requested contract is for consulting services, and the required justification and approval has not been prepared, the request will be returned to the cognizant project office, together with a memorandum stating that the requested contract has been determined to be for consulting services; that justification and approval is required; and that the request for contract services will be acted upon when it is returned accompanied by the required justification and approval.

(c) The justification and approval must be clearly identified as a justification for consulting services, and must provide the following information:

(1) *Need and Utilization:* State concisely the specific need for procuring the consulting service, including the objectives and the anticipated benefits for the Agency. State the estimated cost of the services, and evaluate the cost in terms of anticipated utilization of the work product.

(2) *Review of Prior Work:* Briefly describe efforts made to ensure that the proposed consulting service does not, in the given circumstances, duplicate work conducted previously. Where appropriate, describe the results of an AID Data Bank (located in the Bureau for Program and Policy Coordination, Center for Development Information and Evaluation, Development Information Division—PPC/CDIE/DI) search.

(3) *In-House Capability:* Describe the expertise needed for the service and state whether such expertise exists in AID. If it is found that the expertise does exist in AID, and is available for assignment to the work, state why AID personnel are not being assigned to the task.

(d) The justification must be approved by an officer one level above the organizational unit within a Bureau or Office requesting the service but two levels above during the fourth quarter of the fiscal year. For Mission-awarded direct contracts, these guidelines regarding approval levels should be followed whenever possible; however, throughout the fiscal year, the approval officer need be no higher than the principal AID officer at the post.

(e) *Organizational conflict of interest.* (1) As required by FAR 37.205, offerors must disclose possible conflicts of interest. The offeror will be required to submit the following representation with its proposal:

ORGANIZATIONAL CONFLICTS OF INTEREST REPRESENTATION

(i) The offeror represents, to the best of its knowledge and belief, that the award to it of a contract or the modification of an existing contract does ( ) or does not ( ) involve an organizational conflict of interest.

(ii) The term "organizational conflict of interest" means that a relationship exists whereby an offeror or a contractor (including its chief executives, directors, proposed consultants or subcontractors) has interest which: (A) may diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product, or, (B) may result in an unfair competitive advantage. It does not include the normal flow of benefits from the performance of a contract.

(iii) The term "Contractor" means any person, firm, unincorporated association, joint venture, partnership, corporation or affiliate thereof, which is a party to a contract with the United States of America. As used in this definition, the term "affiliate" has the same meaning as provided in FAR 19.101.

(2) If the offeror indicates that there are organizational conflicts of interest in the "Organizational Conflicts of Interest Representation", the offeror shall provide a statement which describes in a concise manner all relevant facts concerning any present or current planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed in the proposed contract and bearing on whether the offeror has a possible organizational conflict of interest with respect to being able to render impartial, technically sound, and objective assistance or advice, or being given an unfair competitive advantage. The offeror may also provide relevant facts that show how its organizational structure and/or management systems limit its knowledge of possible organizational conflicts of interest relating to other divisions or sections of the organization and how that structure or system would eliminate or neutralize such organizational conflict.

(3) The contract clause entitled "Organizational Conflicts of Interest" set forth in subsection 752.7020 of the AIDAR shall be

included in every contract award pursuant to this Subpart 737.2.

[49 FR 13255, Apr. 3, 1984, as amended at 50 FR 50303, Dec. 10, 1985]

737.271 Contract data reporting.

Within AID, input into the Federal Procurement Data System is accomplished through the Contract On-Line Reporting System. The contracting officer is responsible for insuring that contracts for consulting services are identified as such on Form AID 1420-49, the Contract/Grant/ Cooperative Agreement Data Sheet.

737.272 Identifying contracts for consultant services.

The contracting officer is responsible for identifying all contracts, including purchase orders, work orders, and amendments thereto, determined to be for consulting services in accordance with Subpart 737.2. All copies of such contracts are to be legibly marked "Consulting Services" on the upper right-hand corner of the cover page of the contract.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 742—CONTRACT ADMINISTRATION

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 742.7—Indirect Cost Rates

742.770 Negotiated indirect cost rate agreement.

Except for educational institutions having a cognizant agency (as defined in OMB Circular A-88, 44 FR 70094, 12/5/79) other than AID, AID may establish negotiated overhead rates in a Negotiated Indirect Cost Rate Agreement, executed by both parties. The Negotiated Indirect Cost Rate Agreement is automatically incorporated in each contract between the parties and shall specify: (a) The final rate(s), (b) the base(s) to which the rate(s) apply, (c) the period(s) for which the rate(s) apply, (d) the items treated as direct costs, and (e) the contract(s) to which the rate(s) apply. The Negotiated Indirect Cost Rate Agreement shall not change any monetary ceiling, obligation, or specific cost allowance or disallowance provided for in each contract between the parties.

[49 FR 13256, Apr. 3, 1984; 53 FR 50631, Dec. 16, 1988]

PART 749—TERMINATION OF CONTRACTS

Subpart 749.1—General Principles

Sec.
749.100 Scope of subpart.
749.111 Review of proposed settlements.
749.111-70 Termination settlement review boards.
749.111-71 Required review and approval.

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

SOURCE: 49 FR 13256, Apr. 3, 1984, unless otherwise noted.

Subpart 749.1—General Principles

749.100 Scope of subpart.

The Foreign Aid and Related Agencies Appropriation Act, 1963, and subsequent appropriation Acts, have imposed the following requirement:

> None of the funds appropriated or made available pursuant to this Act for carrying out the Foreign Assistance Act of 1961, as amended, may be used for making payments on any contract for procurement to which the United States is a party entered into after the date of enactment of this Act which does not contain a provision authorizing the termination of such contract for the convenience of the United States.

See, for example, section 110 of the Foreign Assistance and Related Agencies Appropriation Act, 1965.

749.111 Review of proposed settlements.

749.111-70 Termination settlement review boards.

(a) The AID Settlement Review Board shall be composed of the following members or their delegates (except as provided under 749.111-71(b)):

(1) Procurement Executive;
(2) Controller;
(3) General Counsel.

(b) The Procurement Executive or his/her delegate shall be designated as chairman of the board. Delegate members of the board shall have broad business and contracting experience and shall be senior AID officials. Each member or his/her delegate must be in attendance in order to conduct business, and the board shall act by majority vote. No individual shall serve as a member of a board for the review of a proposed settlement if he/she has theretofore reviewed, approved or disapproved or recommended approval, disapproval or other action with respect to any substantive element of such settlement proposal.

(c) The chairman shall appoint a nonvoting recorder who shall be responsible for receiving cases, scheduling and recording the proceedings at meetings, maintaining a log of all cases received by him/her for the board, and other duties as assigned by the board.

749.111-71 Required review and approval.

(a) *When required.* The AID Settlement Review Board shall receive and approve all AID/W and Mission proposed settlements or determinations if:

(1) The amount of settlement, by agreement or determination, involves $50,000 or more;

(2) The settlement or determination is limited to adjustment of the fee of a cost-reimbursement contract or subcontract and: (i) In the case of complete termination, the fee, as adjusted, with respect to the terminated portion of the contract or subcontract is $50,000 or more; or (ii) in the case of a partial termination, the fee, as adjusted, with respect to the terminated portion of the contract or subcontract is $50,000 or more;

(3) The head of the contracting activity concerned determines that a review of a specific case or class of cases is desirable; or

(4) The contracting officer, in his/her discretion, desires review by the board.

(b) *Level of review.* Proposed settlements in excess of $1 million shall be reviewed and approved by a board consisting of the Procurement Executive, the General Counsel, and the Controller, without power of redelegation.

(c) *Submission of information.* The contracting officer shall submit to the board a statement of the proposed settlement agreement or determination, supported by such detailed information as is required for an adequate review. This information should normally include copies of: (1) The contractor's or subcontractor's settlement proposal, (2) the audit report, (3) the property disposal report and any required approvals in connection therewith, and (4) the contracting officer's memorandum explaining the settlement. The board may, in its discretion, require the submission of additional information.

PART 750—EXTRAORDINARY CONTRACTUAL ACTIONS

Sec.
750.000 Scope of part.

Subpart 750.70—[Reserved]

Subpart 750.71—Extraordinary Contractual Actions To Protect Foreign Policy Interests of the United States

750.7100 Scope of subpart.
750.7101 Authority.
750.7102 General policy.
750.7103 Definitions.
750.7104 Types of actions.
750.7105 Approving authorities.
750.7106 Standards for deciding cases.
750.7106-1 General.
750.7106-2 Amendments without consideration.
750.7106-3 Mistakes.
750.7106-4 Informal commitments.
750.7107 Limitations upon exercise of authority.
750.7108 Contractual requirements.
750.7109 Submission of requests by contractors.
750.7109-1 Filing requests.
750.7109-2 Form of requests by contractors.
750.7109-3 Facts and evidence.
750.7110 Processing cases.
750.7110-1 Investigation.
750.7110-2 Intra-agency coordination.
750.7110-3 Submission of cases to the approving authority.
750.7110-4 Processing by approving authority.
750.7110-5 Records.
750.7110-6 Inter-agency coordination.

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

SOURCE: 49 FR 13257, Apr. 3, 1984, unless otherwise noted.

750.000 Scope of part.

AID is not among the agencies named in the Act or authorized by the President to take actions under it; however, see Subpart 750.71—Extraordinary Contractual Actions to Protect Foreign Policy Interests of the United States.

Subpart 750.70—[Reserved]

Subpart 750.71—Extraordinary Contractual Actions To Protect Foreign Policy Interests of the United States

750.7100 Scope of subpart.

This subpart sets forth the standards and the procedures for disposition of requests for extraordinary contractual actions under Executive Order 11223.

750.7101 Authority.

(a) Under section 633 of the Foreign Assistance Act of 1961, 75 Stat. 454 (22 U.S.C. 2933), as amended; Executive Order 11223, dated May 12, 1965 (30 FR 6635), as amended; Executive Order 12163, dated September 29, 1979 (44 FR 56673), as amended; and International Development Cooperation agency Delegation of Authority No. 1, dated October 1, 1979 (44 FR 57521), as amended, the Administrator of the Agency for International Development has been granted authority to provide extraordinary contractual relief. The Authority is set forth in sections 3 and 4 of Executive Order 11223, as follows:

> *Section 3.* With respect to cost-type contracts heretofore or hereafter made with non-profit institutions under which no fee is charged or paid, amendments or modifications of such contracts may be made with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished, irrespective of the time or circumstances of the making, or of the form of the contract amended or modified, or of the amending or modifying contract and irrespective of rights which may have accrued under the contract or the amendments or modifications thereof.
>
> *Section 4.* With respect to contracts heretofore or hereafter made, other than those described in section 3 of this order, amendments and modifications of such contracts may be made with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished, irrespective of the time or circumstances of the making, or the form of the contract amended or modified, or of the amending or modifying contract, and irrespective of rights which may have accrued under the contract or the amendments or modifications thereof, if the Secretary of State or the Director of the United States International Development Cooperation Agency (with respect to functions vested in or delegated to Director) determines in each case that such action is necessary to protect the foreign policy interests of the United States.

(b) The authority delegated to the Director of the International Development Cooperation Agency under Executive Order 11223 has been redelegated to the Administrator, Agency for International Development.

[49 FR 49472, Dec. 20, 1984]

750.7102 General policy.

Extra-contractual claims arising from foreign assistance contracts will be processed in accordance with this subpart, which is similar to that utilized to process claims for extraordinary relief under FAR Part 50, as modified to meet the circumstances involved under the Foreign Assistance Act and the different authority involved.

750.7103 Definitions.

(a) The term "approving authority" as used in this subpart means an officer or official having been delegated authority to approve actions under the Executive Order. This authority is distinguished from authority to take appropriate contractual action pursuant to such approval.

(b) The term "the Executive Order" shall mean Executive Order 11223 (30 FR 6635) as amended, unless otherwise stated.

(c) The term "the Act" shall mean the Foreign Assistance Act of 1961, as amended.

[49 FR 13257, Apr. 3, 1984, as amended at 49 FR 49472, Dec. 20, 1984]

750.7104 Types of actions.

Three types of actions may be taken by or pursuant to the direction of an approving authority under the Executive Order. These are contractual adjustments such as amendments without consideration, correction of mistakes, and formalization of informal commitments.

750.7105 Approving authorities.

All authority to approve actions under this subpart has been delegated to the Procurement Executive.

[50 FR 16086, Apr. 24, 1985]

750.7106 Standards for deciding cases.

750.7106-1 General.

The mere fact that losses occur under a Government contract is not, by itself, a sufficient basis for the exercise of the authority conferred by the Executive Order. Whether, in a particular case, appropriate action such as amendment without consideration, correction of a mistake or ambiguity in a contract, or formalization of an informal commitment, will protect the foreign policy interests of the United States is a matter of sound judgment to be made on the basis of all of the facts of such case. Although it is obviously impossible to predict or enumerate all the types of cases with respect to which action may be appropriate, examples of certain cases or types of cases where action may be proper are set forth in sections 750.7106-2 through 750.7106-4. Even if all of the factors contained in any of the examples are present, other factors or considerations in a particular case may warrant denial of the request. These examples are not intended to exclude other cases where the approving authority determines that the circumstances warrant action.

750.7106-2 Amendments without consideration.

(a) Where an actual or threatened loss under a foreign assistance contract, however caused, will impair the productive ability of a contractor whose continued performance of any foreign assistance contract or whose continued operation as a source of supply is found to be essential to protect the foreign policy interests of the United States, the contract may be adjusted but only to the extent necessary to avoid such impairment to the contractor's productive ability.

(b) Where a contractor suffers a loss (not merely a diminution of anticipated profits) on a foreign assistance contract as a result of Government action, the character of the Government action will generally determine whether any adjustment in the contract will be made and its extent. Where the Government action is directed primarily at the contractor and is taken by the Government in its capacity as the other contracting party, the contract may be adjusted if fairness so requires; thus where such Government action, although not creating any liability on its part, increases the cost of performance, considerations of fairness may make appropriate some adjustment in the contract.

750.7106-3 Mistakes.

A contract may be amended or modified to corrrect or mitigate the effect of a mistake, including the following examples:

(a) A mistake or ambiguity which consists of the failure to express or to express clearly in the written contract the agreements as both parties understood them;

(b) A mistake on the part of the contractor which is so obvious that it was or should have been apparent to the contracting officer; and

(c) A mutual mistake as to a material fact.

Amending contracts to correct mistakes with the least possible delay normally will protect the foreign policy interests of the United States by expediting the procurement program and by giving contractors proper assurance that such mistakes will be corrected expeditiously and fairly.

750.7106-4 Informal commitments.

Informal commitments may be formalized under certain circumstances to permit payment to persons who have taken action without a formal contract; for example, where any person, pursuant to written or oral instructions from an officer or official of the Agency and relying in good faith upon the apparent authority of the officer or official to issue such instructions, has arranged to furnish or has furnished property or services to the agency and/or to a foreign assistance contractor or subcontractor without formal contractual coverage for such property or services. Formalization of commitments under such circumstances normally will protect the foreign policy interests of the United States by assuring persons that they will be treated fairly and paid expeditiously.

750.7107 Limitations upon exercise of authority.

(a) The Executive Order is not authority for:

(1) The use of the cost-plus-a-percentage-of-cost system of contracting;

(2) The making of any contract in violation of existing law relating to limitation on profit or fees;

(3) The waiver of any bid, payment performance or other bond required by law.

(b) No amendments, or modifications shall be entered into under the authority of the Executive Order:

(1) Unless, with respect to cases falling within Section 4 of the Executive Order, a finding is made that the action is necessary to protect the foreign policy interests of the United States;

(2) Unless other legal authority in the Agency is deemed to be lacking or inadequate;

(3) Except within the limits of the amounts appropriated and the statutory contract authorization.

(c) No contract shall be amended or modified unless the request therefor has been filed before all obligations (including final payment) under the contract have been discharged.

(d) No informal commitment shall be formalized unless:

(1) A request for payment has been filed within six months after arranging to furnish or furnishing property or services in reliance upon the commitment;

(2) A.I.D. has received the services satisfactorily performed, or has accepted property furnished in reliance on the commitment;

(3) The A.I.D. employees alleged to have made the informal commitment have accepted responsibility for making the informal commitment in question; and

(4) A.I.D. has taken appropriate action to prevent recurrence.

[49 FR 13257, Apr. 3, 1984, as amended at 50 FR 16088, Apr. 24, 1985; 53 FR 4982, Feb. 19, 1988]

750.7108 Contractual requirements.

Every contract amended or modified pursuant to this subpart shall contain:

(a) A citation of the Act and Executive Order.

(b) A brief statement of the circumstances justifying the action;

(c) A recital of the finding, with respect to cases falling within Section 4 of the Executive Order, that the action is necessary to protect the foreign policy interests of the United States.

750.7109 Submission of requests by contractors.

750.7109-1 Filing requests.

Any person (hereinafter called the "contractor") seeking an adjustment under standards set forth in 750.7106 may file a request in duplicate with the cognizant contracting officer or his/her duly authorized representative. If such filing is impracticable, requests will be deemed to be properly filed if filed with the Director, Planning, Policy and Evaluation Staff (MS/PPE), for forwarding to the cognizant contracting officer.

[49 FR 13257, Apr. 3, 1984, as amended at 50 FR 50303, Dec. 10, 1985; 55 FR 6802, Feb. 27, 1990]

750.7109-2 Form of requests by contractors.

The contractor's request shall normally consist of a letter to the contracting officer providing the information specified in FAR 50.303.

750.7109-3 Facts and evidence.

The contracting officer or the approving authority may, where considered appropriate, request the contractor to furnish the facts and evidence as dsecribed in FAR 50.304.

750.7110 Processing cases.

750.7110-1 Investigation.

The Director, Planning, Policy and Evaluation Staff (MS/PPE), shall be responsible for assuring that the cognizant contracting officer in all cases shall make a thorough investigation of all facts and issues relevant to each case. Facts and evidence shall be obtained from contractor and Government personnel, and shall include signed statements of material facts within the knowledge of the individuals where documentary evidence is lacking, and audits where considered necessary to establish financial or cost facts. The investigation shall establish both the facts essential to meeting the standards for deciding the particular case and the essential facts as to who has authority to approve the request.

[49 FR 13257, Apr. 3, 1984, as amended at 50 FR 50303, Dec. 10, 1985; 55 FR 6802, Feb. 27, 1990]

750.7110-2 Intra-agency coordination.

Prior to the submission of a case to the approving authority recommending extraordinary contractual relief, the claim will be fully developed by the Planning, Policy and Evaluation Staff (MS/PPE) and concurrences or comments obtained from the Office of General Counsel for the proposed relief to be granted. Such concurrences or comments shall be incorporataed in or accompany the action memorandum submited for consideration to the approving authority in accordance with 750.7110-3.

[49 FR 13257, Apr. 3, 1984, as amended at 50 FR 50303, Dec. 10, 1985; 52 FR 38097, Oct. 14, 1987; 55 FR 6802, Feb. 27, 1990]

750.7110-3 Submission of cases to the approving authority.

Cases to be submitted for consideration shall be forwarded by means of an action memorandum signed by the Director, Planning, Policy and Evaluation Staff (MS/PPE). The action memorandum shall state:

(a) The nature of the case;

(b) The basis for authority to act under 750.7101;

(c) The findings of fact essential to the case (see 750.7109-3) arranged chronologically with cross references to supporting enclosures;

(d) The conclusions drawn from applying the standards for deciding cases, as set forth in 750.7106, to the findings of fact;

(e) The disposition recommended, and, if contractual action is recommended with respect to cases falling within section 4 of the Executive Order, the opinion of the signer that such action is necessary to protect the foreign policy interest of the United States; and

(f) The action memorandum shall enclose copies of the contracting officer's findings and recommendations, the evidentiary materials, all other reports and comments of cognizant Government or other officials, and a copy of the contractor's request with a cover sheet providing the following summary information related to the request.

(1) Date of request;

(2) Date request received by AID:

(3) Contract number;

(4) Contractor's name and address;

(5) Name, address, and phone number of contractor's representative;

(6) Name, office symbol, and phone number of cognizant contracting officer;

(7) Amount of request.

[49 FR 13257, Apr. 3, 1984, as amended at 50 FR 50303, Dec. 10, 1985; 55 FR 6802, Feb. 27, 1990]

750.7110-4 Processing by approving authority.

In each case, the approving authority, whether approving or denying the request, shall sign a decision which shall be dated and shall contain the following:

(a) The name and address of the contractor, the contract identification, and the nature of the request;

(b) The decision reached and the actual cost or estimated potential cost, if any, of the settlement;

(c) A concise description of the property or services involved;

(d) A statement of the circumstances justifying the decision; and

(e) If some adjustment action is approved with respect to cases falling within section 4 of the Executive Order, a statement in substantially the following form: I find that the action authorized herein is necessary to protect the foreign policy interests of the United States.

750.7110–5 Records.

The following shall be retained in Agency files as a record of each action processed in accordance with this subpart:

(a) The decision required in 750.7110–4;

(b) The action memorandum and all enclosures as required in 750.7110–3; and

(c) A copy of the contractual document implementing any approved contractual action.

750.7110–6 Inter-agency coordination.

(a) *General.* Where a case involves matters of interest to more than one department or agency, AID should maintain liaison with other departments and agencies of the Government and take such joint action as may be proper under the circumstances, including holding joint meetings.

(b) *Cases involving funds of other departments or agencies.* Requests for adjustment within any category, involving the funds of another department or agency, shall not be approved by AID until advice is requested and received from the department or agency whose funds are involved.

SUBCHAPTER H—CLAUSES AND FORMS

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.2—Texts of Provisions and Clauses

Sec.
752.200 Scope of subpart.
752.202-1 Definitions.
752.203-1 Officials not to benefit.
752.204-2 Security requirements.
752.209-70 Requirement for past performance references.
752.219-8 Utilization of small business concerns and small disadvantaged business concerns.
752.225-9 Buy American Act—Trade Agreements Act—Balance of Payments Program.
752.226-1 Determination of status as a small disadvantaged business.
752.226-2 Subcontracting with disadvantaged enterprises.
752.228-3 Worker's compensation insurance (Defense Base Act).
752.228-7 Insurance—liability to third persons
752.228-9 Cargo insurance.
752.229-70 Federal, state and local taxes.
752.232-7 Payments under time-and-materials and labor-hour contracts.
752.232-70 Letter of credit advance payment.
752.245-70 Government property—AID reporting requirements.
752.245-71 Title to and care of property.

Subpart 752.70—Texts of AID Contract Clauses

752.7000 Scope of subpart.
752.7001 Biographical data.
752.7002 Travel and transportation.
752.7003 Documentation for payment.
752.7004 Source and nationality requirements.
752.7005 Language, weights and measures.
752.7006 Notices.
752.7007 Personnel compensation.
752.7008 Use of Government facilities or personnel.
752.7009 Marking.
752.7010 Conversion of U.S. dollars to local currency.
752.7011 Orientation and language training.
752.7012 Protection of the individual as a research subject.
752.7013 Contractor—mission relationships.
752.7014 Notice of changes in travel regulations.
752.7015 Use of pouch facilities.
Sec.
752.7016 Family planning and population assistance activities.
752.7017 Local cost financing with U.S. dollars.
752.7018 Health and accident coverage for AID participant trainees.
752.7019 Participant training.
752.7020 Organizational conflicts of interest. [Removed and reserved effective October 31, 1990]
752.7021 Changes in tuition and fees.
752.7022 Conflicts between contract and catalog.
752.7023 Required visa form for AID participants.
752.7024 Withdrawal of students.
752.7025 Approvals.
752.7026 Reports.
752.7027 Personnel.
752.7028 Differential and allowances.
752.7029 Post privileges.
752.7030 Inspection trips by contractor's officers and executives.
752.7031 Leave and holidays.
752.7032 International travel approval and notification requirements.

Subpart 752.3-70—AID Clause Matrices—[Reserved]

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

SOURCE: 49 FR 13259, Apr. 3, 1984, unless otherwise noted.

Subpart 752.2—Texts of Provisions and Clauses

752.200 Scope of subpart.

None of the clauses specified in this subpart are for use in AID personal services contract. For personal services contract clauses, see AIDAR Appendix D—Direct AID Contracts with U.S. Citizens or U.S. Residents for Personal Services Abroad.

[49 FR 13259, Apr. 3, 1984, as amended at 51 FR 11450, Apr. 3, 1986; 51 FR 12706, Apr. 15, 1986]

752.202-1 Definitions.

(a) As prescribed in 702.270 and in FAR Subpart 2.2, AID contracts use the Definitions clause in FAR 52.202-1 and its Alternate I, as appropriate, and the following additional definitions.

(b) *Alternate 70.* For use in all AID contracts. Use in addition to the clause in FAR 52.202-1.

AID DEFINITIONS CLAUSE—GENERAL SUPPLEMENT FOR USE IN ALL AID CONTRACTS (JAN. 1990)

(a) "AID" shall mean the Agency for International Development.

(b) "Administrator" shall mean the Administrator or the Deputy Administrator of AID.

(c) When this contract is with an educational institution "Campus Coordinator" shall mean the representative of the Contractor at the Contractor's home institution, who shall be responsible for coordinating the activities carried out under the contract.

(d) When this contract is with an educational institution "Campus Personnel" shall mean representatives of the Contractor performing services under the contract at the Contractor's home institution and shall include the Campus Coordinator.

(e) "Consultant" shall mean any especially well qualified person who is engaged, on a temporary or intermittent basis to advise the Contractor and who is not an officer or employee of the Contractor who performs other duties for the Contractor.

(f) "Contractor employee" shall mean an employee of the Contractor assigned to work under this contract.

(g) "Cooperating Country or Countries" shall mean the foreign country or countries in or for which services are to be rendered hereunder.

(h) "Cooperating Government" shall mean the government of the Cooperating Country.

(i) "Federal Acquisition Regulations (FAR)", when referred to herein shall include Agency for International Development Acquisition Regulations (AIDAR).

(j) "Government" shall mean the United States Government.

(k) "Mission" shall mean the United States AID Mission to, or principal AID office in, the Cooperating Country.

(l) "Mission Director" shall mean the principal officer in the Mission in the Cooperating Country, or his/her designated representative.

(c) *Alternate 71.* For use in AID contracts with an educational institution for participant training. Use in addition to the clauses in FAR 52.202-1 and in 752.202-1(b) of this chapter.

AID DEFINITIONS CLAUSE—SUPPLEMENT FOR CONTRACTS WITH AN EDUCATIONAL INSTITUTION FOR PARTICIPANT TRAINING (APR. 1984)

(a) "Catalog" shall mean any medium by which the Institution publicly announces terms and conditions for enrollment in the Institution, including tuition and fees to be charged. This includes "bulletins," "announcements," or any other similar word the Institution may use.

(b) "Director" shall mean the individual who fills the AID position of Director, Office of International Training, or his/her authorized representative acting within the limits of his/her authority. (c) "Fees" shall mean those applicable charges directly related to enrollment in the Institution. This shall not include any permit charge (e.g., parking, vehicle registration), or charges for services of a personal nature (e.g., food, housing, laundry) unless specifically called for in this contract.

(d) "Institution" shall mean the educational institution providing services hereunder. The terms "Institution" and "Contractor" are synonymous.

(e) "Tuition" shall mean the amount of money charged by an institution for instruction, not including fees as described in this section.

(d) *Alternate 72.* For use in all AID contracts which involve any performance overseas. Use in addition to the clauses in FAR 52.202-1 and in 752.202-1(b) of this chapter.

AID DEFINITIONS CLAUSE—SUPPLEMENT FOR AID CONTRACTS INVOLVING PERFORMANCE OVERSEAS (DEC. 1986)

(a) "Contractor's Chief of Party" shall mean the representative of the Contractor in the Cooperating Country who shall be responsible for supervision of the performance of all duties undertaken by the Contractor in the Cooperating Country.

(b) "Cooperating Country National (CCN) employee" means an individual who meets the citizenship requirements of 48 CFR 702.170-5 and is hired while residing outside the United States for work in a cooperating country.

(c) "Dependents" shall mean:

(1) Spouse;

(2) Children (including step and adopted children) who are unmarried and under 21 years of age or, regardless of age, are incapable of self support.

(3) Parents (including step and legally adoptive parents), of the employee or of the spouse, when such parents are at least 51 percent dependent on the employee for support; and

(4) Sisters and brothers (including step or adoptive sisters or brothers) of the employee, or of the spouse, when such sisters and brothers are at least 51 percent dependent on the employee for support, unmarried and under 21 years of age, or regardless of age, are incapable of self support.

(d) "Local currency" shall mean the currency of the Cooperating Country.

(e) "Regular employee" shall mean a Contractor employee appointed to serve one year or more in the Cooperating Country.

(f)"Short-term employee" shall mean a Contractor employee appointed to serve less than one year in the Cooperating Country.

(g) "Third Country National (TCN) employee" means an individual who meets the citizenship requirements of 48 CFR 702.170-15 and is hired while residing outside the United States for work in a Cooperating Country.

[49 FR 13259, Apr. 3, 1984, as amended at 52 FR 4145, Feb. 10, 1987; 52 FR 38098, Oct. 14, 1987; 55 FR 6802, Feb. 27, 1990]

752.203-1 Officials not to benefit.

For contracts involving performance overseas the clause prescribed in FAR 3.102-2 may be modified to specify that it refers to United States officials.

752.204-2 Security requirements.

Pursuant to the Uniform State/AID/USIA Regulations (Volume 5, Foreign Affairs Manual, Chapter 900), AID applies the safeguards applicable to "Confidential" information to administratively controlled information designated as "Limited Official Use". Therefore, when the clause in FAR 52.204-2 is used in AID contracts, pursuant to 704.405, paragraph (a) of the clause is revised as follows:

(a) This clause applies to the extent that this contract involves access to classified ('Confidential', 'Secret', or 'Top Secret'), or administratively controlled ('Limited Official Use') information.

[49 FR 13259, Apr. 3, 1984, as amended at 49 FR 33668, Aug. 24, 1984]

752.209-70 Requirement for past performance references.

The following provision shall be included in all solicitations substantially as follows:

REQUIREMENT FOR PAST PERFORMANCE REFERENCES (Nov. 1982)

The offeror/bidder is required to submit, as part of its proposal/bid, the following additional information with respect to all contracts, grants or cooperative agreements involving the provision of similar or related services over the past three years to AID and to other organizations (both commercial and Governmental). Failure to provide complete information regarding previous similar/related contracts, grants or cooperative agreements may result in eventual disqualification. The information supplied must include the name and address of the organization for which services were performed; the current telephone number of a responsible technical representative of the organization; the number, if any, of each contract, grant or cooperative agreement; and a brief description of the services provided, including the period during which the services were provided. AID may use this information to contact technical representatives on prior contracts, grants or cooperative agreements to obtain information on performance. The contracting officer will consider such performance data along with other factors specified herein in determining whether the offeror/bidder is to be considered responsible as defined in FAR 9.101.

[50 FR 23712, July 5, 1985]

752.219-8 Utilization of small business concerns and small disadvantaged business concerns.

The Foreign Assistance Act calls for AID to give small businesses an opportunity to provide supplies and services for foreign assistance projects. To help AID meet this obligation, the following paragraph is to be added to the clause prescribed in FAR 19.7008(a):

AID small business provision. To permit AID, in accordance with the small business provisions of the Foreign Assistance Act, to give small business firms an opportunity to participate in supplying equipment supplies and services financed under this contract, the Contractor shall, to the maximum extent possible, provide the following information to the Office of Small and Disadvantaged Business Utilization (OSDBU), AID, Washington, DC 20523, at least 45 days prior to placing any order in excess of $25,000 except where a shorter time is requested of, and granted by OSDBU:

(1) Brief general description and quantity of commodities or services;

(2) Closing date for receiving quotations or bids; and

(3) Address where invitations or specifications may be obtained."

[49 FR 13259, Apr. 3, 1984, as amended at 52 FR 21059, June 4, 1987]

752.225-9 Buy American Act—Trade Agreements Act—Balance of Payments Program.

The clause prescribed by FAR 25.407(a)(2) is not generally included in AID contracts when more stringent source requirements are stated in the contract or when inclusion is not appropriate under FAR 25.403, or 725.403 of this subpart. (See Executive Order 11223, dated May 12, 1965, 30 FR 6635.) The clause setting forth AID's source restrictions is shown in section 752.7004.

[49 FR 13259, Apr. 3, 1984, as amended at 54 FR 16122, Apr. 21, 1989]

752.226-1 Determination of status as a small disadvantaged business.

As prescribed in 726.201, insert the following provision:

SMALL DISADVANTAGED BUSINESS REPRESENTATION (JULY 1990)

(a) *Representation.* The offeror represents that it ☐ is, ☐ is not a small disadvantaged business.

(b) *Definitions.*

Asian Pacific Americans, as used in this provision means United States citizens whose origins are in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, or the Federated States of Micronesia.

Native Americans, as used in this provision means American Indians, Eskimos, Aleuts, and native Hawaiians.

Small business concern, as used in this provision, means a U.S. concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualifies as a small business under the criteria and size standards in 13 CFR part 121.

Small disadvantaged business, as used in this provision, means a small business concern that (a) is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock owned by one or more socially and economically disadvantaged individuals and (b) has its management and daily business controlled by one or more such individuals.

Subcontinent Asian Americans, as used in this provision, means United States citizens whose origins are in India, Pakistan, Bangladesh, Sri Lanka, Bhutan, or Nepal.

(c) *Qualified groups.* The offeror shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and women, provided that an individual shall not be considered an economically disadvantaged individual if his or her personal net worth exceeds $750,000, excluding the equity in his or her primary personal residence and his or her ownership interest in the disadvantaged enterprise in question.

(End of Provision)

[55 FR 39156, Sept. 25, 1990]

752.226-2 Subcontracting with disadvantaged enterprises.

As prescribed in 726.301, insert the following clause:

SUBCONTRACTING WITH DISADVANTAGED ENTERPRISES (JULY 1990)

NOTE: This clause does not apply to prime contractors that qualify as disadvantaged enterprises as described below.

(a) Not less than ten (10) percent of the dollar value of this contract must be subcontracted to disadvantaged enterprises as described in paragraph (b) of this clause.

(b) *Definitions.*

Disadvantaged enterprises means U.S. organizations or individuals that are: (1) business concerns (as defined in FAR 19.001) owned and controlled by socially and economically disadvantaged individuals; (2) institutions designated by the Secretary of Education, pursuant to 34 CFR 608.2, as historically black colleges and universities; (3) colleges and universities having a student body in which more than 40 percent of the students are Hispanic American; or (4) private voluntary organizations which are controlled by individuals who are socially and economically disadvantaged.

Controlled by socially and economically disadvantaged individuals means management and daily business are controlled by one or more such individuals.

Owned by socially and economically disadvantaged individuals means at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock owned by one or more socially and economically disadvantaged individuals.

Socially disadvantaged individuals means individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. Any individual who certifies that he or she is a Black American, Hispanic American, Native American (as defined in FAR 19.001), Asian-Pacific American (as defined in FAR 19.001), Subcontinent-Asian American (as defined in FAR 19.001), or a woman shall be presumed to be a socially disadvantaged individual.

Economically disadvantaged individuals means socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others who are not socially disadvantaged. An individual shall not be considered an economically disadvantaged individual if his or her personal net worth exceeds $750,000, excluding the equity in his or her primary personal residence and his or her ownership interest in the disadvantaged enterprise in question.

(c) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a disadvantaged enterprise.

(End of Clause)

[55 FR 39156, Sept. 25, 1990]

752.228-3 Worker's compensation insurance (Defense Base Act).

As prescribed in 728.309, the following supplemental coverage is to be added to the clause specified in FAR 52.228-3 by the A.I.D. contracting officer.

(a) The Contractor agrees to procure Defense Base Act (DBA) insurance pursuant to the terms of the contract between A.I.D. and A.I.D.'s DBA insurance carrier unless the Contractor has a DBA self insurance program approved by the Department of Labor or has an approved retrospective rating agreement for DBA.

(b) If A.I.D. or the Contractor has secured a waiver of DBA coverage for Contractor's employees who are not citizens of, residents of, or hired in the United States, the Contactor agrees to provide such employees with worker's compensation benefits as required by the laws of the country in which the employees are working, or by the laws of the employee's native country, whichever offers greater benefits. The list of countries for which A.I.D. has secured waiver of DBA coverage is shown in AIDAR 728.305-70(a)(2) (48 CFR 728.305-70(a)(2)).

(c) The Contractor further agrees to insert in all subcontracts hereunder to which the DBA is applicable, a clause similar to this clause, including this sentence, imposing on all subcontractors a like requirement to provide overseas workmen's compensation insurance coverage and obtain DBA coverage under the A.I.D. requirements contract.

[53 FR 50631, Dec. 16, 1988, as amended at 54 FR 16122, Apr. 21, 1989]

752.228-7 Insurance—liability to third persons.

As prescribed in 728.307-2(c), the following paragraph is to be added to the clause specified in FAR 52.228-7 as either paragraph (h) (if FAR 52.228-7 *Alternate I* is not used) or (i) (if FAR 52.228-7 Alternate I is used):

( ) *Insurance on private automobiles.* If the Contractor or any of its employees or their dependents transport or cause to be transported (whether or not at contract expense) privately owned automobiles to the Cooperating Country, or they or any of them purchase an automobile within the Cooperating Country, the Contractor agrees to make certain that all such automobiles during such ownership within the Cooperating Country will be covered by a paid-up insurance policy issued by a reliable company providing the following minimum coverages or such other minimum coverages as may be set by the Mission Director, payable in United States dollars or its equivalent in the currency of the Cooperating Country: injury to persons, $10,000/$20,000; property damage, $5,000. The premium costs for such insurance shall not be a reimbursable cost under this contract. Copies of such insurance policies shall be preserved and made available as part of the Contractor's records which are required to be preserved and made available by the "Examination of Records by the Comptroller General" and "Audit" clauses of this contract.

[53 FR 50632, Dec. 16, 1988, as amended at 54 FR 16122, Apr. 21, 1989]

752.228-9 Cargo insurance.

As prescribed in 728.313(a), the following preface is to be used preceding the text of the clause at FAR 52.228-9:

PREFACE: To the extent that marine insurance is necessary or appropriate under this contract, the contractor shall ensure that U.S. marine insurance companies are offered a fair opportunity to bid for such insurance. This requirement shall be included in all subcontracts under this contract.

[53 FR 50632, Dec. 16, 1988]

752.229-70 Federal, state and local taxes.

For contracts involving performance overseas the clauses prescribed in FAR 29.401-3 or 29.401-4 may be modified to specify that the taxes referred to are United States taxes.

752.232-7 Payments under time-and-materials and labor-hour contracts.

AID uses the payment provision contained in FAR 52.232-7 in indefinite quantity contracts for professional services up to 120 days, as provided in AIDAR 716.501(c). When this provision is used the following preamble will be included:

For the purposes of this clause certain terms shall be interpreted as follows:

The term "contract(s)" includes "delivery order(s)"; "hour(s)", or "hourly" may be calculated in terms of "day(s)" or "daily (8 hours)"; and "materials" includes "other direct costs".

[50 FR 11450, Apr. 3, 1986]

752.232-70 Letter of credit advance payment.

As required by 732.406.70-4, insert the following clause in contracts being paid by Letter of Credit.

LETTER OF CREDIT ADVANCE PAYMENT (OCT. 1989)

(a) Payment under this contract shall be by means of a Letter of Credit (LOC) in accordance with the terms and conditions of the LOC and any instructions issued by the AID Office of Financial Management, Cash Management and Payment Division (PFM/FM/CMP).

(b) As long as the LOC is in effect, the terms and conditions of the LOC and any instructions issued by PFM/FM/CMP constitute the payment conditions of this contract, superseding and taking precedence over any other clause of this contract concerning payment.

(c) If the LOC is revoked, payment may be made on a cost-reimbursement basis, in accordance with the other clauses of this contract concerning payment.

(d) Revocation of the LOC is at the discretion of PFM/FM/CMP after consultation with the contracting officer. Notification to the contractor of revocation must be in writing and must specify the reasons for such action. The contractor may appeal any such revocation to the contracting officer, in accordance with the Disputes clause of this contract. Pending final decision, payments under the contact will be in accordance with paragraph (c) of this clause.

[49 FR 13259, Apr. 3, 1984, as amended at 49 FR 33668, Aug. 24, 1984; 54 FR 46391, Nov. 3, 1989]

752.245-70 Government property—AID reporting requirements.

In response to a GAO audit recommendation, AID contracts must contain the following preface and reporting requirement as additions to the appropriate Government Property clause prescribed by FAR 45.106.

Preface: to be inserted preceding the text of the FAR clause.

The term "Government furnished property" wherever it may appear in the following clause, shall mean (1) non-expendable personal property owned by or leased to the U.S. Government and furnished to the contractor *and* (2) personal property furnished either prior to or during the performance of this contract by any U.S. Government accountable officer to the contractor for use in connection with performance of this contract and identified by such officer as accountable. The term "government property", wherever it may appear in the following clause, shall mean government-furnished property and non-expendable personal property title to which vests in the U.S. Government under this contract. Non-expendable property, for purposes of this contract, is defined as property which is complete in itself, does not lose its identity or become a component part of another article when put into use; is durable, with an expected service life of two years or more; and which has a unit cost of more than $500.

Reporting Requirement: to be inserted following the text of the FAR clause.

Reporting Requirements: The contractor will submit an annual report on all non-expendable property in a form and manner acceptable to AID substantially as follows:

ANNUAL REPORT OF GOVERNMENT PROPERTY IN CONTRACTOR'S CUSTODY

[(Name of contractor) as of (end of contract year), 19xx]

Motor vehicles	Furniture and furnishings—		Other nonexpendable property
	Office	Living quarters	
A. Value of property as of last report			
B. Transactions during this reporting period			
1. Acquisitions (add):			
a. Purchased by contractor [1]			
b. Transferred from AID [2]			
c. Transferred from others, without reimbursement [3]			
2. Disposals (deduct):			
a. Returned to AID			
b. Transferred to AID—contractor purchased			
c. Transferred to other Government agencies [3]			
d. Other disposals [3]			
C. Value of property as of reporting date			

ANNUAL REPORT OF GOVERNMENT PROPERTY IN CONTRACTOR'S CUSTODY—Continued

[(Name of contractor) as of (end of contract year), 19xx]

Motor vehicles	Furniture and furnishings—		Other nonexpendable property
	Office	Living quarters	
D. Estimated average age of contractor held property			
	Years	Years	Years

[1] Property which is complete in itself, does not lose its identity or become a component part of another article when put into use; is durable, with an expected service life of two years or more; and which has a unit cost of more than $500.

[2] Government furnished property listed in this Contract as nonexpendable.

[3] Explain if transactions were not processed through or otherwise authorized by AID.

PROPERTY INVENTORY VERIFICATIONS

I attest that (1) physical inventories of Government property are taken not less frequently than annually; (2) the accountability records maintained or Government property in our possession are in agreement with such inventories; and (3) the total of the detailed accountability records maintained agrees with the property value shown opposite line C above, and the estimated average age of each category of property is as cited opposite line D above.

Authorized Signature

752.245-71 Title to and care of property.

It is AID policy to vest title with the cooperating country for contractor acquired property used in a cooperating country. The following clause is for use in all AID contracts under which the contractor will acquire property for use overseas under the contract.

TITLE TO AND CARE OF PROPERTY (APR. 1984)

(a) Title to all non-expendable property purchased with contract funds under this contract and used in the Cooperating Country, shall at all times be in the name of the Cooperating Government, or such public or private agency as the Cooperating Government may designate, unless title to specified types or classes of non-expendable property is reserved to AID under provisions set forth in the schedule of this contract; but all such property shall be under the custody and control of Contractor until the owner of title directs otherwise, or completion of work under this contract or its termination, at which time custody and control shall be turned over to the owner of title or disposed of in accordance with its instructions. All performance guaranties and warranties obtained from suppliers shall be taken in the name of the title owner. (Non-expendable property is property which is complete in itself, does not lose its identity or become a component part of another article when put into use; is durable, with an expected service life of two years or more; and which has a unit cost of $500 of more.)

(b) Contractor shall prepare and establish a program, to be approved by the Mission, for the receipt, use, maintenance, protection, custody, and care of non-expendable property for which it has custodial responsibility, including the establishment of reasonable controls to enforce such program.

(c)(1) For non-expendable property to which title is reserved to the U.S. Government under provisions set forth in the schedule of this contract, Contractor shall submit an annual report on all non-expendable property under its custody as required in the clause of this contract entitled "Government Property".

(2) For non-expendable property titled to the Cooperating Government, the Contractor shall, within 90 days after completion of this contract, or at such other date as may be fixed by the Contracting Officer, submit an inventory schedule covering all items of non-expendable property under its custody, which have not been consumed in the performance of this contract. The Contractor shall also indicate what disposition has been made of such property.

Subpart 752.70—Texts of AID Contract Clauses

752.7000 Scope of subpart.

Subpart 752.70 contains the text of AID-specific contract clauses for which there is no FAR equivalent. The clauses in this Subpart do not apply to contracts for personal services. For personal service contract clauses see AIDAR Appendix D—Direct AID Contracts with U.S. Citizens or U.S. Residents for Personal Services Abroad.

752.7001 Biographical data.

This clause is required in all AID contracts.

BIOGRAPHICAL DATA (DEC. 1988)

(a) The Contractor agrees to furnish to the Contracting Officer on AID Form 1420-17, "Contractor Employee Biographical Data Sheet", biographical information on the following individuals to be employed in the performance of the contract: (1) All individuals to be sent outside of the United

States, (2) any employees designated as "key personnel". Biographical data in the form usually maintained by the Contractor on the other individuals employed under the contract shall be available for review by A.I.D. at the Contractor's headquarters. A supply of AID Form 1420-17 will be provided with this contract. The Contractor may reproduce additional copies as necessary.

(b) Emergency locator information. The Contractor agrees to provide the following information to the Mission Administrative Officer on or before the arrival in the host country of every contract employee or dependent:

(1) The individual's full name, home address, and telephone number.

(2) The name and number of the contract, and whether the individual is an employee or dependent.

(3) The contractor's name, home office address, and telephone number, including any after-hours emergency number(s), and the name of the contractor's home office staff member having administrative responsibility for the contract.

(4) The name, address, and telephone number(s) of each individual's next of kin.

(5) Any special instructions pertaining to emergency situations such as power of attorney designees or alternate contact persons.

[49 FR 13259, Apr. 3, 1984, as amended at 53 FR 50632, Dec. 16, 1988]

§ 752.7002 Travel and transportation.

For use in cost reimbursement contracts performed in whole or in part overseas.

TRAVEL AND TRANSPORTATION (JAN. 1990)

(a) *General.* The Contractor will be reimbursed for reasonable, allocable and allowable travel and transportation expenses incurred under and for the performance of this contract. Determination of reasonableness, allocability and allowability will be made by the Contracting Officer based on the applicable cost principles, the Contractor's established policies and procedures, AID's established policies and procedures for AID direct-hire employees, and the particular needs of the project being implemented by this contract. The following paragraphs provide specific guidance and limitations on particular items of cost.

(b) *International travel.* For travel to and from post of assignment the Contractor shall be reimbursed for travel costs and travel allowances of travelers from place of residence in the United States (or other location provided that the cost of such travel does not exceed the cost of the travel from the employee's residence in the United States) to the post of duty in the Cooperating Country and return to place of residence in the United States (or other location provided that the cost of such travel does not exceed the cost of travel from the post of duty in the Cooperating Country to the employee's residence) upon completion of services by the individual. Reimbursement for travel will be in accordance with the applicable cost principles and the provisions of this contract, and will be limited to the cost of travel by the most direct and expeditious route. If a regular employee does not complete one full year at post of duty (except for reasons beyond his/her control), the costs of going to and from the post of duty for that employee and his/her dependents are not reimbursable hereunder. If the employee serves more than one year but less than the required service in the Cooperating Country (except for reasons beyond his/her control) the costs of going to the post of duty are reimbursable hereunder but the costs of going from post of duty to the employee's permanent, legal place of residence at the time he or she was employed for work under this contract or other location as approved by the Contracting Officer are not reimbursable under this contract for the employee and his/her dependents. When travel is by economy class accommodations, the Contractor will be reimbursed for the cost of transporting up to 22 pounds of accompanied personal baggage per traveler in addition to that regularly allowed with the economy ticket provided that the total number of pounds of baggage does not exceed that regularly allowed for first class travelers. Travel allowances for travelers shall not be in excess of the rates authorized in the Standardized Regulations (Government Civilians, Foreign Areas)—hereinafter referred to as the Standardized Regulations—as from time to time amended, for not more than the travel time required by scheduled commercial air carrier using the most expeditious route. One stopover en route for a period of not to exceed 24 hours is allowable when the traveler uses economy class accommodations for a trip of 14 hours or more of scheduled duration. Such stopover shall not be authorized when travel is by indirect route or is delayed for the convenience of the traveler. Per diem during such stopover shall be paid in accordance with the established practice of the Contractor but not to exceed the amounts stated in the Standardized Regulations.

(c) *Local travel.* Reimbursement for local travel in connection with duties directly referable to the contract shall not be in excess of the rates established by the Mission Director for the travel costs of travelers in the Cooperating Country. In the absence of such established rates the Contractor shall be reimbursed for actual travel costs of travelers in the Cooperating Country, if not provided by the Cooperating Government or the Mission, including travel allowances at rates not in excess of those prescribed by the Standardized Regulations.

(d) *Travel for consultation.* The Contractor shall be reimbursed for the round trip of the Contractor's Chief of Party in the Cooperating Country or other designated Contractor employee or consultant in the Cooperating Country performing services required under this Contract, for travel from the Cooperating Country to the Contractor's office in the United States or to AID/Washington for consultation and return on occasions deemed necessary by the Contractor and approved in advance, in writing, by the Contracting Officer or the Mission Director.

(e) *Special international travel and third country travel.* For special travel which advances the purpose of the contract, which is not otherwise provided by the Cooperating Government, and with the prior written approval of the Contracting Officer or the Mission Director, the Contractor shall be reimbursed for (i) the travel cost of travelers other than between the United States and the Cooperating Country and for local travel within other countries and (ii) travel allowance for travelers while in travel status and while performing services hereunder in such other countries at rates not in excess of those prescribed by the Standardized Regulations.

(f) *Indirect travel for personal convenience.* When travel is performed by an indirect route for the personal convenience of the traveler, the allowable costs of such travel will be computed on the basis of the cost of allowable air fare via the direct usually traveled route. If such costs include fares for air or ocean travel by foreign flag carriers, approval for indirect travel by such foreign flag carriers must be obtained from the Contracting Officer or the Mission Director before such travel is undertaken, otherwise only that portion of travel accomplished by United States-flag carriers will be reimbursable within the above limitation of allowable costs.

(g) *Limitation on travel by dependents.* Travel costs and allowances will be allowed only for dependents of regular employees and such costs shall be reimbursed for travel from place of abode to assigned station in the Cooperating Country and return, only if dependent remains in the country for at least 9 months or one-half of the required tour of duty of the regular employee responsible for such dependent, whichever is greater. If the dependent is eligible for educational travel pursuant to the "Differential and Allowances" clause of this contract, time spent away from post resulting from educational travel will be counted as time at post.

(h) *Delays en route.* The Contractor may grant to travelers under this contract reasonable delays en route while in travel status when such delays are caused by events beyond the control of such traveler or Contractor. It is understood that if delay is caused by physical incapacitation, personnel shall be eligible for such sick leave as provided under the "Leave and Holidays" clause of this contract.

(i) *Travel by privately owned automobile.* The Contractor shall be reimbursed for the cost of travel performed by a regular employee in his/her privately owned automobile at a rate not to exceed that authorized in the Federal Travel Regulations plus authorized per diem for the employee and for each of the authorized dependents traveling in the automobile, if the automobile is being driven to or from the Cooperating Country as authorized under the contract, provided that the total cost of the mileage and the per diem paid to all authorized travelers shall not exceed the total constructive cost of fare and normal per diem by all authorized travelers by surface common carrier or authorized air fare, whichever is less.

(j) *Emergency and irregular travel and transportation.* Emergency transportation costs and travel allowances while en route, as provided in this section will also be reimbursed not to exceed amounts authorized by the Foreign Service Travel Regulations for AID-direct hire employees in like circumstances under the following conditions:

(1) The costs of going from post of duty in the Cooperating Country to the employee's permanent, legal place of residence at the time he or she was employed for work under this contract or other location for Contractor employees and dependents and returning to the post of duty, when the Contractor's Chief of Party, with the concurrence of the Contracting Officer or Mission Director makes a written determination that such travel is necessary for one of the reasons specified in subparagraphs (j)(1) (i) and (ii) of this section. A copy of the written determination shall be furnished to the Contracting Officer.

(i) Need for medical care beyond that available within the area to which the employee is assigned, or serious effect on physical or mental health if residence is continued at assigned post of duty, subject in either case, to the limitations stated in the clause of this contract entitled "Personnel—Physical Fitness of Employee and Dependents." The Mission Director may authorize a medical attendant to accompany the employee at contract expense if, based on medical opinion, such an attendant is necessary.

(ii) Death, or serious illness or injury of a member of the immediate family of the employee or the immediate family of the employee's spouse.

(2) When, for any reason, the Mission Director determines it is necessary to evacuate the Contractor's entire team (employees and dependents) or Contractor dependents only, the Contractor will be reimbursed for travel and transportation expenses and travel allowance while en route, for the cost of the individuals going from post of duty in the Cooperating Country to the employee's permanent, legal place of residence at the time he or she was employed for work under this contract or other approved location. The return of such employees and dependents may also be authorized by the Mission Director when, in his/her discretion, he/she determines it is prudent to do so.

(3) The Mission Director may also authorize emergency or irregular travel and transportation in other situations, when in his/her opinion, the circumstances warrant such action. The authorization shall include the kind of leave to be used and appropriate restrictions as to time away from post, transportation of personal and/or household effects, etc. Requests for such emergency travel shall be submitted through the Contractor's Chief of Party.

(k) *Home leave travel.* To the extent that home leave has been authorized as provided in the "Leave and Holidays" clause of this contract, the cost of travel for home leave is reimbursable for travel costs and travel allowances of travelers from the post of duty in the Cooperating Country to place of residence in the United States (or other location provided that the cost of such travel does not exceed the cost of travel to the employee's residence in the United States) and return to the post of duty in the Cooperating Country. Reimbursement for travel will be in accordance with the applicable cost principles and the provisions of this contract, and will be limited to the cost of travel by the most direct and expeditious route. When travel is by economy class accommodations, the Contractor will be reimbursed for the cost of transporting up to 22 pounds of accompanied personal baggage per traveler in addition to that regularly allowed with the economy ticket provided that the total number of pounds of baggage does not exceed that regularly allowed for first class travelers. Travel allowances for travelers shall not be in excess of the rates authorized in the Standardized Regulations as from time to time amended, for not more than the travel time required by scheduled commercial air carrier using the most expeditious route. One stopover en route for a period of not to exceed 24 hours is allowable when the traveler uses economy class accommodations for a trip of 14 hours or more of scheduled duration. Such stopover shall not be authorized when travel is by indirect route or is delayed for the convenience of the traveler. Per diem during such stopover shall be paid in accordance with the established practice of the Contractor but not to exceed the amounts stated in the Standardized Regulations.

(l) *Rest and recuperation travel.* The Contractor shall be reimbursed for the cost of travel performed by regular employees and dependents for purposes of rest and recuperation provided that such reimbursement does not exceed that authorized for AID direct hire employees, and provided further that no reimbursement will be made unless approval is given by the Contractor's Chief of party.

(m) *Transportation of motor vehicles, personal effects and household goods.* (1) Transportation, including packing and crating costs, will be paid for shipping from the point of origin in the United States (or other location as approved by the Contracting Officer) to post of duty in the Cooperating Country and return to point of origin in the United States (or other location as approved by the Contracting Officer) of one privately-owned vehicle for each regular employee, personal effects of travelers and household goods of each regular employee not to exceed the limitations in effect for such shipments for AID direct hire employees in accordance with the Foreign Service Travel Regulations as in effect when shipment is made.

(2) If a regular employee does not complete one full year at post of duty (except for reasons beyond his/her control), the costs for transportation of vehicles, effects and goods to and from the post of duty are not reimbursable hereunder. If the employee serves more than one year but less than the required service in the Cooperating Country (except for reasons beyond his/her control) the costs for transportation of vehicles, effects and goods to the post of duty are reimbursable hereunder but the costs for transportation of vehicles, effects and goods from post of duty to the employee's permanent, legal place of residence at the time he or she was employed for work under this contract or other location as approved by the Contracting Officer are not reimbursable under this contract.

(3) The cost of transporting motor vehicles and household goods shall not exceed the cost of packing, crating and transportation by surface. In the event that the carrier does not require boxing or crating of motor vehicles for shipment to the Cooperating Country, the cost of boxing or crating is not reimbursable. The transportation of a privately-owned motor vehicle for a regular employee may be authorized by the Contractor as replacement of the last such motor vehicle shipped under this contract for the employee when the Mission Director or his/her designee determines in advance and so notifies the Contractor in writing that the replacement is necessary for rea-

sons not due to the negligence or malfeasance of the regular employee. The determination shall be made under the same rules and regulations that apply to Mission employees.

(n) *Unaccompanied baggage.* Unaccompanied baggage is considered to be those personal belongings needed by the traveler immediately upon arrival at destination. To permit the arrival of effects to coincide with the arrival of regular employees and dependents, consideration should be given to advance shipments of unaccompanied baggage. The Contractor will be reimbursed for costs of shipment of unaccompanied baggage (in addition to the weight allowance for household effects) not to exceed the limitations in effect for AID direct hire employees in accordance with the Foreign Service Travel Regulations as in effect when shipment is made.

This unaccompanied baggage may be shipped as air freight by the most direct route between authorized points of origin and destination regardless of the modes of travel used. This provision is applicable to home leave travel and to short-term employees when these are authorized by the terms of this contract.

(o) *Storage of household effects.* The cost of storage charges (including packing, crating, and drayage costs) in the U.S. of household goods of regular employees will be permitted in lieu of transportation of all or any part of such goods to the Cooperating Country under paragraph (m) above provided that the total amount of effects shipped to the Cooperating Country or stored in the U.S. shall not exceed the amount authorized for AID direct hire employees under the Uniform Foreign Service Travel Regulations.

(p) *International ocean transportation.* (1) Flag eligibility requirements for ocean carriage are covered by the "Source and Nationality Requirements" clause of this contract.

(i) Transportation of things. Where U.S. flag vessels are not available, or their use would result in a significant delay, the Contractor may obtain a release from this requirement from the Transportation Division, Office of Procurement, Agency for International Development, Washington, DC. 20523, or the Mission Director, as appropriate, giving the basis for the request.

(ii) Transportation of persons. Where U.S. flag vessels are not available, or their use would result in a significant delay, the Contractor may obtain a release from this requirement from the Contracting Officer or the Mission Director, as appropriate.

(2) Transportation of foreign-made vehicles. Reimbursement of the costs of transporting a foreign-made motor vehicle will be made in accordance with the provisions of the Foreign Service Travel Regulations.

(3) Reduced rates on U.S. flag carriers. Reduced rates on United States flag carriers are in effect for shipments of household goods and personal effects of AID contract personnel. These reduced rates are available provided the shipper states on the bill of lading that the cargo is "Personal property-not for resale-payment of freight charges is at U.S. Government (AID) expense and any special or diplomatic discounts accorded this type cargo are applicable." The Contractor will not be reimbursed for shipments of household goods or personal effects in an amount in excess of the reduced rates available in accordance with the foregoing.

(End of Clause)

[55 FR 6803, Feb. 27, 1990]

752.7003 Documentation for payment.

The following clause is required in all A.I.D.-direct cost-reimbursement contracts:

Documentation for Payment (Apr. 1984)

(a) Claims for reimbursement under this contract shall be submitted to the Paying Office indicated on the cover page of this contract. The authorized Certifying Officer of the Paying Office is the designated representative of the Contracting Officer, authorized to approve vouchers under this contract. The Contractor shall submit a Voucher Form SF-1034 (original) and SF-1034(a) in three copies. Each voucher shall be identified by the appropriate A.I.D. contract number, properly executed, in the amount of dollar expenditures made during the period covered. The voucher forms shall be supported by:

(1) Original and three copies of a certified fiscal report rendered by the Contractor in a form and manner satisfactory to A.I.D. substantially as follows:

Category	Budget amount	To date	This period (indicate dates)
Salaries and wages:			
Home office	$XXX	$XXX	$XXX
Field office	XXX	XXX	XXX
Indirect costs:			
Home office	XXX	XXX	XXX
Field office	XXX	XXX	XXX
Consultant fees	XXX	XXX	XXX
Allowances	XXX	XXX	XXX
Travel and transportation	XXX	XXX	XXX
Expendable equipment and materials	XXX	XXX	XXX
Non-expendable property	XXX	XXX	XXX
Participant costs	XXX	XXX	XXX
Other direct costs	XXX	XXX	XXX
Grand total	$XXX	$XXX	$XXX

(2) The fiscal report shall include a certification; signed by an authorized representative of the Contractor, as follows:

The undersigned hereby certifies that (i) the fiscal report and any attachments have been prepared from the books and records of the Contractor in accordance with the terms of this contract, and to the best of my knowledge and belief, that they are correct, that the sum claimed under this Contract is proper and due, that all the costs of contract performance (except as herewith reported in writing) have been paid or will be paid currently by the Contractor when due in the ordinary course of business, that the work reflected by the costs above has been performed, that the quantities and amounts involved are consistent with the requirements of this Contract, that all required Contracting Officer approvals have been obtained, and (ii) appropriate refund to A.I.D. will be made promptly upon request in the event of disallowance of costs not reimbursable under the terms of this Contract.

By: ______________________

Title: ______________________

Date: ______________________

(3) Unless otherwise provided in this contract, the Contractor shall submit a vendor's invoice detailing the quantity, description, and price for each individual item purchased, as follows:

(i) Expendable equipment, supplies, or commodities—for transactions totaling more than $2,500.

(ii) Non expendable property—for every purchase. Non-expendable property is property which is complete in itself, does not lose its identity or become a component part of another article when put into use; is durable, with an expected service life of two years or more; and which has be a unit cost of more than $500.

(iii) The bill of lading or airway bill as evidence of shipment by U.S.-flag carrier.

(b) *Local currency payment.* The Contractor is fully responsible for the proper expenditure and control of local currency, if any, provided under this contract. Local currency will be provided to the Contractor in accordance with written instructions provided by the Mission Director. The written instructions will also include accounting, vouchering, and reporting procedures. A copy of the instructions shall be provided to the Contractor's Chief of Party and to the Contracting Officer. The costs of bonding personnel responsible for local currency are reimbursable under this contract.

(c) Upon compliance by the Contractor with all the provisions of this contract, acceptance by the Government of the work and final report, and a satisfactory accounting by the Contractor of all Government-owned property for which the Contractor had custodial responsiblity, the Government shall promptly pay to the Contractor any moneys (dollars or local currency) due under the completion voucher. The Government will make suitable reduction for any disallowance or indebtedness by the Contractor by applying the proceeds of the voucher first to such deductions and next to any unliquidated balance of advance remaining under this contract.

(d) The Contractor agrees that all approvals of the Mission Director and the Contracting Officer which are required by the provisions of this contract shall be preserved and made available as part of the Contractor's records which are required to be presented and made available by the clauses of this contract entitled "Examination of Records by Comptroller General" and "Audit".

[53 FR 6829, Mar. 3, 1988]

752.7004 Source and nationality requirements.

The following clause is required in all AID contracts under which the contractor will procure goods or services.

SOURCE AND NATIONALITY REQUIREMENTS
(APR. 1989)

(a) *General.* Except as may be specifically approved or directed in advance by the Contracting Officer, all goods (e.g., equipment, vehicles, materials and supplies), and services which will be financed under this contract with United States dollars shall be procured in and shipped from the United States, or from any other countries within the authorized geographic code or codes specified in the schedule of this contract. Guidance on eligibility of specific goods or services may be obtained from the Contracting Officer. AID policies on source and nationality requirements are contained in Chapters 4 and 5 of AID Handbook 1, Supplement B (Procurement Policies).

(b) *Ocean and air transportation.*

(1) Except as otherwise approved in writing by the Contracting Officer, AID will finance only those ocean transportation costs:

(i) Incurred on vessels under U.S. flag registry, when Geographic Code 000 is authorized for procurement of goods or services;

(ii) Incurred on vessels under U.S., Cooperating Country, or other Countries included in geographic Code 941 flag registry, when Geographic Code 941 is authorized for procurement of goods or services; or

(iii) Incurred on vessels under flag registry of any free world country, if the costs are part of the total cost on a through bill of lading paid to a carrier for initial carriage on a vessel which is authorized in accordance with paragraphs (b)(1)(i) and (ii), above.

(2) Any ocean or air charter, covering full or part cargo, for the transportation of goods purchased under this contract must be approved by the Transportation Division, Office of Procurement, prior to shipment.

(3) When use of non-U.S. flag vessels has been authorized, the following requirements still apply:

(i) At least 50% of the gross tonnage of all goods purchased under this contract and transported to the Cooperating Country on ocean vessels shall be transported on privately-owned U.S. flag commercial vessels, to the extent such vessels are available at fair and reasonable rates for such vessels, and

(ii) At least 50% of the gross freight revenue generated by shipments of goods purchased under this contract and transported to the Cooperating Country on dry cargo liners shall be paid to or for the benefit of privately-owned U.S. flag commercial vessels to the extent such vessels are available at fair and reasonable rates for such vessels.

(4) When U.S. flag vessels are not available, or their use would result in a significant delay, the contractor may request a certificate of nonavailability from the AID Transportation Support Division, Office of Commodity Management, giving the basis for the request. Such a determination of nonavailability will relieve the contractor of the requirement to use U.S. flag vessels for the tonnage of goods included in the determination.

(5) Vouchers submitted for reimbursement which include ocean shipment costs shall contain a certification essentially as follows: "I hereby certify that a copy of each ocean bill of lading concerned has been submitted to the Maritime Administration, Division of National Cargo, 400 Seventh Street, S.W., Washington, DC 20590 and that such bills of lading state all of the carrier's charges including the basis for calculation such as weight or cubic measurement".

(6) For use of U.S. flag air carriers, see the General Provision entitled "Preference for U.S. Flag Air Carriers".

(c) *Marine insurance.* The eligibility of marine insurance is determined by the country in which it is "placed." Insurance is "placed" in country if payment of the insurance premium is made to, and the insurance policy is issued by, an insurance company located in that country. Eligible countries for placement are governed by the authorized geographic code, except that if Code 941 is authorized, the Cooperating Country is also eligible. Section 604(d) of the Foreign Assistance Act requires that if a recipient country discriminates by statute, decree, rule, or practice with respect to AID-financed procurement against any marine insurance company authorized to do business in any State of the United States, then any AID-financed commodity shipped to that country shall be insured against marine risk and the insurance shall be placed in the U.S. with a company or companies authorized to do a marine insurance business in any State of the U.S.

(d) *Ineligible goods and services.* The following goods or services shall not be procured under this contract:

(1) Military equipment,
(2) Surveillance equipment,
(3) Commodities and services for support of police or other law enforcement activities,
(4) Abortion equipment and services,
(5) Luxury goods and gambling equipment, or
(6) Weather modification equipment.

If AID determines that the Contractor has procured any of these specific ineligible goods and services under this contract and has received payment therefor, the Contractor agrees to refund to AID the entire amount of the purchase.

(e) *Restricted goods.* The Contractor shall not procure any of the following goods or services without the prior written approval of the Contracting Officer:

(1) Agricultural commodities,
(2) Motor vehicles,
(3) Pharmaceuticals,
(4) Pesticides,
(5) Plasticizers,
(6) Used equipment,
(7) U.S. government-owned excess property, or
(8) Fertilizer.

If AID determines that the Contractor has procured any of these specified restricted goods under this contract without the prior written authorization of the Contracting Officer, and has received payment for such purposes, the Contractor agrees to refund to AID the entire amount of the purchase.

(f) *Printed or audio-visual teaching materials.* If the effective use of printed or audio-visual teaching materials depends upon their being in the local language and if such materials are intended for technical assistance projects or activities financed by AID in whole or in part and if other funds, including U.S.-owned or U.S.-controlled local currencies are not readily available to finance the procurement of such materials, local language versions may be procured from the following sources, in order of preference:

(1) Code 000, United States,
(2) Code—, Cooperating Country,
(3) Code 941, Selected Free World,
(4) Code 899, Free World.

(g) *Ineligible suppliers.* Funds provided under this contract shall not be used to procure any commodity or commodity-related service from any supplier who is debarred or suspended pursuant to the procedures in 22 CFR Part 208—Government-wide Debarment and Suspension (Nonprocurement).

[49 FR 13259, Apr. 3, 1984, as amended at 49 FR 49473, Dec. 20, 1984; 50 FR 50303, Dec. 10, 1985; 51 FR 20652, June 6, 1986; 54 FR 16123, Apr. 21, 1989]

752.7005 Language, weights, and measures.

The following clause shall be used in all AID direct contracts.

LANGUAGE, WEIGHTS, AND MEASURES (APR. 1984)

The English language shall be used in all written communications between the parties under this contract with respect to services to be rendered and with respect to all documents prepared by the Contractor except as otherwise provided in the contract or as authorized by the Contracting Officer. Wherever weights and measures are required or authorized, all quantities and measures shall be made, computed, and recorded in the metric system, unless specified otherwise in the schedule of the contract.

752.7006 Notices.

The following clause shall be used in all AID contracts.

NOTICES (APR. 1984)

Any notice given by any of the parties hereunder shall be sufficient only if in writing and delivered in person or sent by telegraph, cable, or registered or regular mail as follows:

To AID: Administrator, Agency for International Development, Washington, DC 20523. Attention: Contracting Officer (the name of the cognizant Contracting Officer with a copy to the appropriate Mission Director).

To Contractor: At Contractor's address shown on the cover page of this contract, or to such other address as either of such parties shall designate by notice given as herein required. Notices hereunder shall be effective when delivered in accordance with this clause or on the effective date of the notice, whichever is later.

752.7007 Personnel compensation.

The following clause shall be used in all AID cost-reimbursement contracts.

PERSONNEL COMPENSATION (AUG. 1984)

(a) Direct compensation of the Contractor's personnel will be in accordance with the Contractor's established policies, procedures, and practices, and the cost principles applicable to this contract.

(b) Compensation (i.e., the employee's base annual salary plus overseas recruitment incentive, if any) which exceeds the maximum payable annual or daily rate for a Foreign Service Officer Class FS-1 as set forth in the payment schedule of the Uniform State/AID/USIA Regulations, as from time to time amended, will be reimbursed only with the approval of the Contracting Officer.

[49 FR 13259, Apr. 3, 1984, as amended at 49 FR 33669, Aug. 24, 1984]

752.7008 Use of Government facilities or personnel.

The following clause is for use in all AID contracts.

USE OF GOVERNMENT FACILITIES OR PERSONNEL (APR. 1984)

(a) The Contractor and any employee or consultant of the Contractor is prohibited from using U.S. Government facilities (such as office space or equipment) or U.S. Government clerical or technical personnel in the performance of the services specified in the contract, unless the use of Government facilities or personnel is specifically authorized in the contract, or is authorized in advance, in writing, by the Contracting Officer.

(b) If at any time it is determined that the Contractor, or any of its employees or consultants have used U.S. Government facilities or personnel without authorization either in the contract itself, or in advance, in writing, by the Contracting Officer, then the amount payable under the contract shall be reduced by an amount equal to the value of the U.S. Government facilities or personnel used by the Contractor, as determined by the Contracting Officer.

(c) If the parties fail to agree on an adjustment made pursuant to this clause, it shall be considered a dispute, and shall be dealt with under the terms of the clause of this contract entitled "Disputes".

752.7009 Marking.

The following clause is for use in all AID contracts performed in whole or in part overseas.

MARKING (APR. 1984)

(a) It is AID policy that AID-financed commodities and shipping containers, and project construction sites and other project locations be suitably marked with the AID red, white, and blue handclasp emblem. Shipping containers are also to be marked with the last five digits of the AID financing document number. As a general rule, marking is not required for raw materials shipped in bulk (such as coal, grain, etc.), or for semifinished products which are not packaged.

(b) Specific guidance on marking requirements should be obtained prior to procurement of commodities to be shipped, and as early as possible for project construction sites and other project locations. This guidance will be provided through the cognizant technical office indicated on the cover page of this contract, or by the Mission Director in the Cooperating Country to which commodities are being shipped, or in which the project site is located.

(c) Authority to waive marking requirements is vested with the Regional Assistant Administrators, and with Mission Directors.

(d) A copy of any specific marking instructions or waivers from marking requirements is to be sent to the Contracting Officer; the original should be retained by the Contractor.

752.7010 Conversion of U.S. dollars to local currency.

For use in all AID contracts involving performance overseas.

Conversion of U.S. Dollars to Local Currency (Apr. 1984)

Upon arrival in the Cooperation Country, and from time to time as appropriate, the Contractor's Chief of Party shall consult with the Mission Director who shall provide, in writing, the procedure the Contractor and its employees shall follow in the conversion of United States dollars to local currency. This may include, but is not limited to, the conversion of said currency through the cognizant U.S. Disbursing Officer or Mission Controller, as appropriate.

752.7011 Orientation and language training.

For use in all AID cost-reimbursement contracts involving performance overseas.

Orientation and Language Training (Apr. 1984)

(a) Regular employees shall receive a maximum of 2 weeks AID sponsored orientation before travel overseas. The dates of orientation shall be selected by the Contractor from the orientation schedule provided by AID.

(b) Participation in AID sponsored orientation in no way relieves the Contractor of its responsibility for assuring that all employees, regular and short-term, are properly oriented. As an addition to or substitution for AID's sponsored orientation for regular employees, the following types of orientation may be authorized taking into consideration specific job requirements, the employee's prior overseas experience, or unusual circumstances.

(1) Modified orientation.

(2) Language training, particularly when significant for operating capabilities.

(3) Orientation and language training for regular employee's dependents.

(4) Contractor-sponsored orientation.

(5) Orientation in all matters related to the administrative, logistical, and technical aspects of the employee's movement to, and tour of duty in, the Cooperating Country.

(c) Authorization for an additional or alternate orientation program, if any, shall be either set forth in the schedule or provided in writing by the Contracting Officer.

(d) Travel expenses not to exceed one round trip from regular employee's residence to place of orientation and return will be reimbursed, pursuant to the cost principles applicable to this contract. Allowable salary costs during the period of orientation are also reimbursable.

752.7012 Protection of the individual as a research subject.

This clause is for use in any AID contract which involves research using human subjects.

Protection of the Individual as a Research Subject (Apr. 1984)

The contractor is required to comply with the procedures in Title 45, Subtitle A, Part 46 of the Code of Federal Regulations.

752.7013 Contractor-mission relationships.

For use in all AID contracts involving performance overseas. Note that paragraph (f) of this clause is applicable only in contracts with an educational institution.

Contractor-Mission Relationships (Oct 1989)

(a) The Contractor acknowledges that this contract is an important part of the United States Foreign Assistance Program and agrees that its operations and those of its employees in the Cooperating Country will be carried out in such a manner as to be fully commensurate with the responsibility which this entails.

(b) The Mission Director is the chief representative of AID in the Cooperating Country. In this capacity, he/she is responsible for both the total AID program in the cooperating country including certain administrative responsibilities set forth in this contract, and for advising AID regarding the performance of the work under the contract and its effect on the United States Foreign Assistance Program. Although the Contractor will be responsible for all professional, technical, and administrative details of the work called for by the contract, it shall be under the guidance of the Mission Director in matters relating to foreign policy. The Chief of Party shall keep the Mission Director currently informed of the progress of the work under the contract.

(c) In the event the conduct of any Contractor employee is not in accordance with the preceding paragraphs, the Contractor's Chief of Party shall consult with the Mission Director and the employee involved and shall recommend to the Contractor a course of action with regard to such employee.

(d) The parties recognize the right of the U.S. Ambassador to direct the removal from a country of any U.S. citizen or the discharge from this contract of any third-country national or cooperating-country national when, at the discretion of the Ambassador, the interests of the United States so require. Under these circumstances termination of an employee and replacement by an acceptable substitute shall be at no cost to AID.

(e) If it is determined that the services of such employee shall be terminated, the Contractor shall use its best efforts to cause the return of such employee to the United States or point of origin as appropriate.

[The following paragraph (f) is applicable if the contract is with an educational institution:]

(f) It is understood by the parties that the Contractor's responsibilities shall not be restrictive of academic freedom. Notwithstanding these academic freedoms, the Contractor's employees, while in the Cooperating Country, are expected to show respect for its conventions, customs, and institutions, to abide by applicable laws and regulations, and not to interfere in its internal political affairs.

(End of Clause)

[54 FR 46391, Nov. 3, 1989]

§ 752.7014 Notice of changes in travel regulations.

The following clause is for use in cost-reimbursement contracts involving work overseas.

NOTICE OF CHANGES IN TRAVEL REGULATIONS (JAN. 1990)

(a) Changes in travel, differential, and allowance regulations shall be effective on the beginning of the Contractor's next pay period following the effective date of the change as published in the applicable travel regulations (the Standardized Regulations (Government Civilians, Foreign Areas), the Uniform State/AID/USIA Foreign Service Travel Regulations, and the Federal Travel Regulations).

(b) The Standardized Regulations (Government Civilians Foreign Areas), and the Federal Travel Regulations are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(c) Information regarding the Uniform State/AID/USIA Foreign Service Travel Regulations as referenced in the "Travel and Transportation" clause of this contract may be obtained from the Contracting Officer.

(End of Clause)

[55 FR 6805, Feb. 27, 1990]

752.7015 Use of pouch facilities.

For use in all AID Contracts involving performance overseas.

USE OF POUCH FACILITIES (APR. 1984)

(a) Use of diplomatic pouch is controlled by the Department of State. The Department of State has authorized the use of pouch facilities for AID contractors and their employees as a general policy, as detailed in paragraphs (a)(1) through (a)(7) of this clause; however, the final decision regarding use of pouch facilities rests with the Embassy or AID Mission. In consideration of the use of pouch facilities as hereinafter stated, the Contractor and its employees agree to indemnify and hold harmless the Department of State and AID against loss or damage occurring in pouch transmission.

(1) Contractors and their employees are authorized use of the pouch for transmission and receipt of up to a maximum of 2 pounds per shipment of correspondence and documents needed in the administration of foreign assistance programs.

(2) U.S. citizen employees are authorized use of the pouch for personal mail up to a maximum of one pound per shipment (but see paragraph (a)(3) of this clause).

(3) Merchandise, parcels, magazines, or newspapers are not considered to be personal mail for purposes of this clause, and are not authorized to be sent or received by pouch.

(4) Official mail pursuant to paragraph (a)(1) of this section sent by pouch should be addressed as follows: Name of individual or organization (followed by letter symbol "C"), Name of post (USAID/———), Agency for International Development, Washington, DC 20523.

(5) Personal mail pursuant to paragraph (a)(2) of this clause should be sent to the address specified in paragraph (a)(4) of this clause, but without the name of the organization.

(6) Mail sent via the diplomatic pouch may not be in violation of U.S. Postal laws and may not contain material ineligible for pouch transmission.

(7) AID contractor personnel are not authorized use of military postal facilities (APO/FPO). This is an Adjutant General's decision based on existing laws and regulations governing military postal facilities and is being enforced worldwide. Posts having access to APO/FPO facilities and using such for diplomatic pouch dispatch, may, however, accept official mail from Contractors and letter mail from their employees for the pouch, provided of course, adequate postage is affixed.

(b) The Contractor shall be responsible for advising its employees of this authorization and these guidelines and limitations on use of pouch facilities.

(c) Specific additional guidance on use of pouch facilities in accordance with this clause is available from the Post Communication Center at the Embassy or AID Mission.

752.7016 Family planning and population assistance activities.

The following clause is applicable to all contracts involving any aspect of family planning or population activities.

FAMILY PLANNING AND POPULATION ASSISTANCE ACTIVITIES (AUG. 1986)

(a) *Voluntary Participation.* (1) The Contractor agrees to take any steps necessary to ensure that funds made available under this contract will not be used to coerce any individual to practice methods of family planning inconsistent with such individual's moral, philosophical, or religious beliefs. Further, the Contractor agrees to conduct its activities in a manner which safeguards the rights, health and welfare of all individuals who take part in the program.

(2) Activities which provide family planning services or information to individuals, financed in whole or in part under this contract, shall provide a broad range of family planning methods and services available in the country which the activity is conducted or shall provide information to such individuals regarding where such methods and services may be obtained.

(b) *Prohibition on Abortion-related Activities.* No funds made available under this Contract shall be used to finance, support, or be attributed to the following activities: (i) Procurement or distribution of equipment intended to be used for the purposes of inducing abortions as a method of family planning; (ii) special fees or incentives to women to coerce or motivate them to have abortions; (iii) payments to persons to perform abortions or to solicit persons to undergo abortions; (iv) information, education, training, or communication programs that seek to promote abortion as a method of family planning; (v) any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning (epidemiologic or descriptive research to assess the incidence, extent or consequences of abortion is not precluded); or (vi) lobbying for abortion.

(c) *Voluntary Participation Requirements for Sterilization Programs.* (1) None of the funds made available under this contract shall be used to pay for the performance of involuntary sterilizations or to coerce or provide any financial incentive to any person to practice sterilizations.

(2) The Contractor shall insure that any surgical sterilization procedures supported in whole or in part by funds from the contract are performed only after the individual has voluntarily come to the treatment facility and has given an informed consent to the sterilization procedure. Informed consent means the voluntary knowing assent from the individual given after being advised of the surgical procedures to be followed, the attendant discomforts and risks, the benefits to be expected, the availability of alternative methods of family planning, the purpose of the operation and its irreversibility, and the fact that the consent can be withdrawn at any time prior to the operation. An individual's consent is considered voluntary if it is based upon the exercise of free choice and is not obtained by any special inducement or any element of force, fraud, deceit, duress or other forms of coercion or misrepresentation.

(3) Further, the Contractor shall document the patient's informed consent by: (i) A written consent document in a language the patient understands and speaks, which explains the basic elements of informed consent, as set out above, and which is signed by the individual and by the attending physician or by the authorized assistant of the attending physician; or (ii) when a patient is unable to read adequately a written certification signed by the attending physician or by the authorized assistant of the attending physician that the basic elements of informed consent above were orally presented to the patient, and that the patient thereafter consented to the performance of the operation. The receipt of the oral explanation shall be acknowledged by the patient's mark on the certification and by the signature or mark of the witness who shall be of the same sex and speak the same language as the patient.

(4) Copies of the informed consent forms and certification documents for each voluntary sterilization (VS) procedure must be retained by the performing Contractor or subcontractor for a period of three years after the performance of the sterilization procedure.

(d) The Contractor shall insert the substance of this clause in any subgrants, subcontracts, purchase orders, and other subordinate agreements hereunder whenever appropriate to the goods and services to be provided under such agreements.

[49 FR 13259, Apr. 3, 1984, as amended at 49 FR 33669, Aug. 24, 1984; 51 FR 34985, Oct. 1, 1986]

752.7017 Local cost financing with U.S. dollars.

For use in any AID contract involving performance overseas, under which local cost financing has been authorized in accordance with Chapter 18 of AID Handbook 1, Supplement B.

LOCAL COST FINANCING WITH U.S. DOLLARS (APR. 1984)

Local cost financing is the use of U.S. dollars to obtain local currency for the procurement of goods and services in the Cooperating Country in furtherance of the purpose of the contract. Local cost financing must be specifically authorized in the schedule of the contract. The amount of U.S. dollars which may be used must be specified in the authorization, together with any special restrictions on their use. Procurement of goods and services under local cost financing is subject to the restrictions governing Ineligible goods and services, and Restricted goods in 48 CFR 752.7004(d) and 752.7004(e). Unless otherwise specifically authorized, the policies in chapter 18 of AID Handbook 1, Supplement B are applicable to all local cost financing.

752.7018 Health and accident coverage for AID participant trainees.

For use in any AID contract under which AID participants are trained.

HEALTH AND ACCIDENT COVERAGE FOR AID PARTICIPANT TRAINEES (OCT. 1989)

(a) The Contractor shall enroll all non-U.S. participants (hereinafter referred to as "participants"), whose training in the U.S. is financed by AID under this contract, in AID's Health and Accident Coverage (HAC) program.

(b) The Contractor shall, prior to the initiation of travel by each participant financed by AID under this contract, fill out and mail to AID the Participant Data Form (form AID 1381-4). The contractor can obtain a supply of these cards and instructions for completing them, from the Office of International Training, AID Washington, DC 20523.

(c) The Contractor shall assure that enrollment shall begin immediately upon the participant's departure for the United States for the purpose of participating in a training program financed by AID and that enrollment shall continue in full force and effect until the participant returns to his/her country of origin, or is released from AID's responsibility, whichever is the sooner. The Contractor shall continue enrollment for participants whose departure is delayed due to medical or other compelling reasons, with the written concurrence of the AID Project Manager and subject to the requirements of paragraph (d).

(d) The Contractor shall submit the Participant Data Form to AID, as specified in paragraph (b) of this section, to enable the participant(s), or the provider of medical services, to submit bills for medical costs resulting from illness and accident to the HAC Administrator (the name and address of the HAC Administrator may be obtained from either PFM/FM/CMP (see paragraph (d)(1) of this clause), or from the Office of International Training (see paragraph (b) of this clause).

The HAC Administrator, not the Contractor, shall be responsible for paying all reasonable and necessary charges, not otherwise covered by student health service or other insurance programs (see paragraphs (e) and (f)), subject to the availability of funds for such purposes, in accordance with the standards of coverage established by AID under the HAC program, and subject to the payment of the fee specified in paragraph (d)(1), of this clause.

(1) Within thirty (30) days after enrollment, the Contractor shall send to: Agency for International Development, Office of Financial Management, Cash Management and Payment Division, Non-Project Assistance, Washington, DC 20523, an enrollment fee computed on the basis of the fixed rate per participant per month (information regarding the current rate is available from the AID Office of International Training, or the HAC Administrator). The minimum period for calculation of fee is one month—that is, one participant month, 30 days, not one calendar month. Premiums may not be prorated for fractional periods of less than 30 days. The enrollment fee should cover a minimum period of up to one year or the current training period for which funds are obligated under this contract, whichever is less. As applicable, payments for additional periods of enrollment shall be made 30 days prior to the beginning of each new enrollment period or new period of funding of this contract. All such fee payments shall be made by check, payable to the "Agency for International Development (HAC)." If payments are not made within 30 days, a late payment charge shall apply at a percentage rate based on the current value of funds to the Treasury for each 30 day period; the

full charge shall also be applicable to periods of less than 30 days. The percentage rate will be calculated by the Treasury as an average of the current value of funds to the Treasury for a recent three month period and will be transmitted to AID in TFRM Bulletins.The late payment charge shall be applied to any portion of the fees in arrears and be remitted together with the fees as a separately identified item on the covering memorandum.

(2) Whenever possible, fee payments for groups of several participants entering the HAC Program within the thirty-day reporting period shall be consolidated and covered by a single check. Participants covered by the fee payment shall be listed individually in a covering letter, identifying each participant (the name reported must be identical to that on the HAC enrollment card), showing period of enrollment (or period of coverage for which payment is remitted if this is different from the enrollment period), fee amount paid, contract number, and U.S. Government appropriation number (as shown under the "Accounting and Appropriation Data" block of the cover page of the contract).

(e) The Contractor, to the extent that it is an educational institution with a student health service program, shall also enroll all participants in their institution's student health service program. Medical costs which are covered under the institution's student health service shall not be eligible for payment under AID's HAC program. The Contractor shall provide the HAC Administrator with a copy of information showing what medical costs are covered by the institution's student health service program; medical costs that are not covered by the institution's student health service program shall be submitted to the HAC Administrator.

(f) If the Contractor has a mandatory, non-waivable health and accident insurance program for students, the costs of such insurance will be allowable under this contract. Any claims eligible under such insurance will not be payable under AID's HAC plan or under this contract. Even though the participant is covered by the Contractor's mandatory, non-waivable health and accident insurance program, the participant MUST be enrolled in AID's more comprehensive HAC program and HAC payments MUST be made to AID as provided above. In addition, a copy of the mandatory insurance policy must be forwarded to the HAC Administrator.

(g) Any payments for medical costs not covered by the Contractor's student health service program, or mandatory, non-waivable health and accident insurance program, or AID's HAC program shall be reimbursable under this contract only with specific written approval of the Contracting Offic and subject to the availability of funds.

[49 FR 13259, Apr. 3, 1984, as amended at 4 FR 33669, Aug. 24, 1984; 54 FR 46391, Nov. 3, 1989]

752.7019 Participant training.

For use in any AID direct contract involving training of AID participants. Note that paragraphs (d) through (g) of this clause are applicable only when the contract is with an educational institution.

PARTICIPANT TRAINING (OCT. 1989)

(a) *Definitions*. (1) Participant training is the training of any foreign national outside of his or her home country, using AID funds.

(2) A Participant is any foreign national being trained under this contract outside of his or her country.

(b) *Applicable regulations*. Proposals for contracts involving training of AID participants, and participant training conducted under an AID contract shall follow the policies established in AID Handbook 10—"Participant Training," except to the extent that specific exceptions to AID Handbook 10 have been provided in this contract. (Handbook 10 may be obtained by submitting a request to the Office of International Training, at the address specified in paragraph (c) of this section.)

(c) *Reporting requirement*. Once each month the Contractor shall submit three copies of form AID 1381-4, "Participant Data Form" to the Office of International Training, AID, Washington, DC 20523.

[The following paragraphs (d) through (g) are applicable if this contract is with an educational institution.]

(d) To the extent foreign country national training is authorized in the schedule of this contract, the contractor shall be reimbursed for the following reasonable and allocable costs incurred in providing training and observation to participants in the United States or other approved location:

(1) Customary tuition and fees of the institution in which the training takes place, as published in catalogs and announcements.

(2) Typing of papers and allowances for required textbooks, the titles of which will be approved by the Contractor.

(3) Travel within the United States or other countries (other than the country of the participant), as approved by the Contractor, including the cost of travel from port of entry into the United States to Contractor's campus to port of embarkation from the United States.

(4) Subsistence while in the United States or in third countries not to exceed maximum AID rates established in AID Handbook 10, as from time to time amended.

(5) Other direct costs authorized in the operational plan or otherwise determined by the Contracting Officer to be allowable in accordance with the general provisions clause of this contract entitled "Allowable Cost and Payment".

(e) Health and accident coverage for foreign-country nationals is governed by the clause of this contract entitled "Health and Accident Coverage for AID Participant Trainees."

(f) For participants assigned to the Contractor for whom specifically-designed courses not otherwise covered in paragraph (d)(1) of this clause are authorized, the Contractor shall be paid the following in lieu of the costs authorized in paragraph (d)(1) of this clause.

(1) For not exceeding 20 instructional days (days on which such courses are scheduled to meet and are actually conducted):

(i) One participant: $150 for the first day, and $50 per day for each additional day, up to 19 days.

(ii) Groups up to and including 10 participants: for the first day, $150 for the first participant, and $50 for each additional participant. For each additional day, up to 19 days, $50 for each participant.

(2) For more than 20 instructional days or more than 10 participants: The Contractor shall submit a proposal including supporting cost and pricing data to the Contracting Officer for approval.

(g) The Contractor shall prepare and submit to the Office of International Training a non-obligating Project Implementation Order/Participant, AID Form 1380-1, on all participants trained under this contract, in either the United States or a third country.

(End of Clause)

[54 FR 46391, Nov. 3, 1989]

752.7020 [Reserved]

EFFECTIVE DATE NOTE: At 55 FR 39977, Oct. 1, 1990, § 752.7020 was removed and reserved, effective October 31, 1990. For the convenience of the user, the superseded section follows

752.20 Organizational conflicts of interest.

For use in all AID contracts.

ORGANIZATIONAL CONFLICTS OF INTEREST (MAR. 1985)

(a) The Contractor warrants that, to the best of its knowledge and belief, and except as otherwise set forth in this contract, it does not have any organizational conflicts of interest.

(1) The term "organizational conflict of interest" means that a relationship exists whereby an offeror or a contractor (including chief executives, directors, proposed consultants or subcontractors) has interests which (i) may diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product or, (ii) may result in an unfair competitive advantage. It does not include the "normal flow of benefits" from the performance of a contract.

(2) The term "Contractor" means any person, firm, unincorporated association, joint venture, partnership, corporation or affiliate thereof, which is a party to a contract with the United States of America. As used in this definition, the term "affiliate" has the same meaning as provided in FAR 9.403.

(b) The Contractor agrees that, if after award it discovers an organizational conflict of interest with respect to this contract, it shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or proposes to take to avoid, eliminate or neutralize the conflict. The Government may, however, terminate the contract for the convenience of the Government if it would be in the best interests of the Government.

(c) The Contractor agrees further that if the award follows a sealed bidding solicitation and a conflict of interest was identified prior to award, it will adequately avoid, eliminate or neutralize the conflict in a manner satisfactory to the Contracting Officer.

(d) In the event that the Contractor was aware of an organizational conflict of interest prior to the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the Government may terminate the contract at no cost to the Government.

[49 FR 13259, Apr. 3, 1984, as amended at 50 FR 16088, Apr. 24, 1985]

752.7021 Changes in tuition and fees.

For use in contracts for participant training with an educational institution.

CHANGES IN TUITION AND FEES (APR. 1984)

While educational programs for participants will be established utilizing the Contractor's currently applicable tuition and fee schedule, the parties understand that such standard tuition and fees may be subject to change during the course of the program. If such event results in an increase in the cost of the program, AID agrees to pay such increased standard tuition and fees in the next applicable academic term as a condition for the continuation of the program. If such change results in a decrease in the cost of the program, the Contractor agrees to charge to AID only the amount of such revised standard tuition and fees in the next applicable academic term. The Contractor shall undertake to keep AID currently advised as to changes in its standard tuition and fees. At such time as increases in the amounts of tuition and fees results in there being inadequate funds remaining in this contract to meet the costs of the next academic term, the Contractor will so advise AID. AID may then provide such additional funds as required to complete the program.

752.7022 Conflicts between contract and catalog.

For use in contracts for participant training with an educational institution.

CONFLICTS BETWEEN CONTRACT AND CATALOG (APR. 1984)

In the event of any inconsistency between the provisions of this contract and any catalog, or other document incorporated in this contract by reference or otherwise or any of the Contractor's rules and regulations, the provisions of this contract shall govern.

752.7023 Required visa form for AID participants.

For use in any AID direct contract which involves training of AID participants.

REQUIRED VISA FORM FOR AID PARTICIPANTS (APR. 1984)

The Contractor shall insure that any foreign student brought to the United States for training under this contract uses visa form IAP 66A "Certificate for Exchange Visitor (J-1) Status".

752.7024 Withdrawal of students.

For use in contracts for participant training with an educational institution.

WITHDRAWAL OF STUDENTS (APR. 1984)

(a) The Government may, at its option and at any time, withdraw any student.

(b) The Contractor may request withdrawal by the Government of any student for academic or disciplinary reasons.

(c) If such withdrawal occurs prior to the end of a term, the Government shall pay any tuition and fees due for the current term in which the student may be enrolled, and the Contractor shall credit the Government with any charges eligible for refund under the Contractor's standard procedures for civilian students in effect on the effective date of such withdrawal.

(d) Withdrawal of students by the Government shall not be the basis for any special charge or claim by the Contractor other than as provided by the Contractor's standard procedures.

752.7025 Approvals.

For use in all AID contracts.

APPROVALS (APR. 1984)

All approvals required to be given under the contract by the Contracting Officer or the Mission Director shall be in writing and, except when extraordinary circumstances make it impracticable, shall be requested by the Contractor sufficiently in advance of the contemplated action to permit approval, disapproval or other disposition prior to that action. If, because of existing conditions, it is impossible to obtain prior written approval, the approving official may, at his discretion, ratify the action after the fact.

752.7026 Reports.

For use in all AID contracts for technical or professional services.

REPORTS (OCT. 1989)

(a) *Reports required.* The Contractor shall prepare the following reports:

(1) A semi-annual, substantive report submitted within 45 days of the end of the period being covered, covering the status of the work under the contract, indicating progress, setting forth plans for the ensuing period, and including recommendations covering the current needs in the fields of activity covered under the terms of this contract.

(2) [This paragraph (a)(2) is applicable to cost reimbursement contracts only.] A semi-annual, administrative report submitted within 45 days of the end of the period being covered, covering expenditures by contract budget category, personnel employed under the contract, and foreign nationals being trained under the contract (if any).

(3) A final report which summarizes the accomplishments of the assignment, methods of work used, and recommendations regarding unfinished work and/or program continuation. The final report shall be submitted within 60 days after completion of the work hereunder unless required date of submission is extended by the Contracting Officer.

(4) Any other reports specified in the Schedule of this contract.

(b) *Distribution of reports.* Copies of reports required under paragraph (a) shall be distributed as follows:

(1) 3 copies to the Contracting Officer;

(2) 4 copies to the Project Officer; and

(3) 2 copies to the Bureau for Program and Policy Coordination, Center for Devel-

opment Information and Evaluation, Development Information Division, addressed as follows: PPC/CDIE/DI, ACQUISITIONS, Room 209, SA-18, Agency for International Development, Washington, DC 20523.

(c) *General.* (1) The title page of all reports shall include a descriptive title, the author's name(s), contract number, project number and title, contractor's name, name of the AID project office, and the publication or issuance date of the report.

(2) When preparing reports, the contractor shall refrain from using elaborate art work, multicolor printing and expensive paper/binding, unless it is specifically authorized in the Contract Schedule. Wherever possible, pages should be printed on both sides using single spaced type.

(End of Clause)

[54 FR 46392, Nov. 3, 1989]

752.7027 Personnel.

(a) *Alternate 70.* For use in AID fixed-price contracts involving performance overseas.

PERSONNEL (APR. 1984)

(a) *Cooperating country clearance.* The Contractor shall not send any individual outside the United States to perform work under the contract without first obtaining written notification from the Contracting Officer of country clearance for the employee.

(b) *Individuals engaged or assigned when outside the United States.* No individual shall be engaged or assigned when outside the United States to perform work outside the United States unless authorized in the Schedule or otherwise approved by the Contracting Officer or Mission Director.

(c) *Physical fitness of employees.* Contractor shall exercise reasonable precautions in assigning employees for work under this contract in the Cooperating Country to assure that such employees are physically fit for work and residence in the Cooperating Country. In carrying out this responsibility Contractor shall require all such employees (other than those hired in the Cooperating Country) to be examined by a licensed doctor of medicine. Contractor shall require the doctor to certify that, in the doctor's opinion, the employee is physically qualified to engage in the type of activity for which he/she is employed and the employee is physically qualified to reside in the country to which he is assigned for duty. The employee's medical certification shall be retained by the Contractor and made available to AID if so required.

(d) *Conformity to laws and regulations of Cooperating Country.* Contractor agrees to use its best efforts to assure that its personnel, while in the Cooperating Country, will abide by all applicable laws and regulations of the Cooperating Country and political subdivisions thereof.

(e) *Sale of personal property or automobiles.* To the extent permitted by Cooperating Country laws, the importation and sale of personal property or automobiles by Contractor employees and their dependents in the Cooperating Country shall be subject to the same limitations and prohibitions which apply to U.S. nationals employed by the Mission. This provision does not apply to employees or consultants who are citizens or legal residents of the Cooperating Country.

(f) *Conflict of Interest.* Other than work to be performed under this contract for which an employee or consultant is assigned by the Contractor, no such employee or consultant of the Contractor, shall engage, directly or indirectly, either in his/her own name or in the name or through the agency of another person, in any business, profession or occupation in the Cooperating Country or other foreign countries to which he/she is assigned, nor shall he make loans or investments to or in any business, profession or occupation in the Cooperating Country or other foreign countries in which he/she is assigned. This provision does not apply to employees or consultants who are citizens or legal residents of the Cooperating Country.

(g) *Right to recall.* On the written request of the Contracting Officer or of a cognizant Mission Director, the Contractor will terminate the assignment of any individual to any work under the contract and, as requested, will use its best efforts to cause the return to the United States of the individual from overseas or his/her departure from a foreign country or a particular foreign locale. Termination of each employee and placement of a substitute employee shall be at no cost to AID.

(b) *Alternate 71.* For use in AID cost reimbursement contracts involving performance overseas.

PERSONNEL (APR. 1984)

(a) *Clearance.*

(1) *Individuals Engaged or Assigned Within the United States.*

The Contractor will obtain written notification from the Contracting Officer of Cooperating Country clearance of any employee sent outside the United States to perform duties under this contract.

(2) *Individuals Engaged or Assigned When Outside the United States.* No individual shall be engaged or assigned when outside the United States to perform work outside the United States under this contract unless authorized in the schedule or otherwise approved by the Contracting Officer or Mission Director. However, when services are performed in the Cooperating Country on a

casual or irregular basis or in an emergency, exception to this provision can be made in accordance with instructions or regulations established by the Mission Director.

(b) *Duration of Appointments.*

(1) Regular employees will normally be appointed for a minimum of 2 years which period includes orientation (less language training) in the United States and authorized international travel under the contract except:

(i) An appointment may be made for less than 2 years if the contract has less than 2 years but more than 1 year to run; provided, that if the contract is extended the appointee shall also be extended to the full 2 years. This provision shall be reflected in the employment agreement prior to employment under this contract.

(ii) When a 2-year appointment is not required, appointment may be made for less than 2 years but in no event less than 1 year.

(iii) When the normal tour of duty established for AID personnel at a particular post is less than 2 years, then a normal appointment under this contract may be of the same duration; or

(iv) When the Contractor is unable to make appointments of regular employees for a full 2 years, the Contractor may make appointments of less than 2 but not less than 1 year, provided that such appointment is approved by the Contracting Officer.

(2) Services required for less than 1 year will be considered short-term appointments and the employee will be considered a short-term employee.

(c) *Employment of Dependents.* If any person who is employed for services in the Cooperating Country under this contract is either (1) a dependent of an employee of the Government working in the Cooperating Country, or (2) a dependent of a Contractor employee working under a contract with the Government in the Cooperating Country, such person shall continue to hold the status of a dependent and be entitled and subject to the contract provisions which apply to dependents except as they apply to employees. He or she shall be entitled to salary for the time services are actually performed in the cooperating country, and differential and allowances as established by the Standardized Regulations (Government Civilians, Foreign Areas).

(d) *Physical Fitness of Employees and Dependents.*

(1) *Predeparture.* For all employees (other than those hired in the Cooperating Country) and their authorized dependents, it shall be certified by a licensed doctor of medicine that in his/her opinion the employee is physically qualified to engage in the type of activity for which he/she is to be employed and that he/she and his/her dependents are physically able to reside in the country to which he/she is assigned. If the Contractor has no such medical certificate on file prior to the departure for the cooperating country of any employee or authorized dependent and such employee is unable to perform the type of activity for which he is employed and complete his tour of duty because of any physical disability (other than physical disability arising from an accident while employed under this contract) or such authorized dependent is unable to reside in the cooperating countr, for at least 9 months or one-half of the period, whichever is greater, of the related employee's initial tour of duty because of any physical disability (other than physical disability arising from an accident while a dependent under this contract), the contractor shall not be reimbursed for the return transportation of the physically disabled employee or dependent required to return because of such disability.

(2) *End of tour.* The contractor is authorized to provide its regular employees and dependents with physical examinations within 60 days after completion of their regular tours of duty.

(3) The Contractor is encouraged to establish its own policy of pre- and post-tour medical examinations. As a contribution, AID shall reimburse the Contractor for physical examinations authorized in paragraphs (d) (1) and (2) of this clause as follows:

(i) For the employee and dependents 12 years of age and over: Not to exceed $100 for the physical examination plus reimbursement of charges for immunizations.

(ii) For dependents under 12 years of age: Not to exceed $40 for each child plus reimbursement of charges for immunizations.

(e) *Importation, purchase, or sale of personal property or automobiles.* To the extent permitted by the Cooperating Country laws and regulations, the importation, purchase, and sale of personal property or automobiles by Contractor employees and their dependents in the Cooperating Country shall be subject to the same limitations and prohibitions which apply to Mission employees and their dependents.

(f) *Economic and financial activities.* Other than work to be performed under this contract for which an employee is assigned by the contractor, no regular or short-term employee of the Contractor shall engage, directly or indirectly, either in his/or her own name or in the name or through the agency of another person, in any business, profession, or occupation in the Cooperating Country or other foreign countries to which he/she is assigned, nor shall he make loans or investments to or in any business, profession, or occupation in the Cooperating

Country or other foreign countries to which he/she is assigned.

752.7028 Differential and allowances.

The following clause is for use in all AID cost reimbursement contracts performed in whole or in part overseas.

DIFFERENTIALS AND ALLOWANCES (DEC. 1988)

(This clause does not apply to TCN or CCN employees. TCN and CCN employees are not eligible for differentials and allowances, unless specifically authorized by the cognizant Assistant Administrator or Mission Director. A copy of such authorization shall be retained and made available as part of the contractor's records which are required to be preserved and made available by the "Examination of Records by the Comptroller General" and "Audit" clauses of this contract).

(a) *Post differential.* Post differential is an additional compensation for service at places in foreign areas where conditions of environment differ substantially from conditions of environment in the continental United States and warrant additional compensation as a recruitment and retention incentive. In areas where post differential is paid to AID direct-hire employees, post differential not to exceed the percentage of salary as is provided such AID employees in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 500 (except the limitation contained in Section 552, "Ceiling on Payment") Tables-Chapter 900, as from time to time amended, will be reimbursable hereunder for employees in respect to amounts earned during the time such employees actually spend overseas on work under this contract. When such post differential is provided to Contractor employees, it shall be payable beginning on the date of arrival at the post of assignment and continue, including periods away from post on official business, until the close of business on the day of departure from post of assignment en route to the United States. Sick or vacation leave taken at or away from the post of assignment will not interrupt the continuity of the assignment or require a discontinuance of such post differential payments, provided such leave is not taken within the United States or the territories of the United States. Post differential will not be payable while the employee is away from his/her post of assignment for purposes of home leave. Short-term employees shall be entitled to post differential beginning with the forty-third (43rd) day at post.

(b) *Living quarters allowance.* Living quarters allownce is an allowance granted to reimburse an employee for substantially all of his/her cost for either temporary or residence quarters whenever Government-owned or Government-rented quarters are not provided to him/her at his/her post without charge. Such costs are those incurred for temporary lodging (temporary lodging allowance) or one unit of residence quarters (living quarters allowance) and include rent, plus any costs not included therein for heat, light, fuel, gas, electricity and water. The temporary lodging allowance and the living quarters allowance are never both payable to an employee for the same period of time. The Contractor will be reimbursed for payments made to employees for a living quarters allowance for rent and utilities if such facilities are not supplied. Such allowance shall not exceed the amount paid AID employees of equivalent rank in the Cooperating Country, in accordance with either the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 130, as from time to time amended, or other rates approved by the Mission Director. Subject to the written approval of the Mission Director, short-term employees may be paid per diem (in lieu of living quarters allownce) at rates prescribed by the Federal Travel Regulations, as from time to time amended, during the time such short-term employees spend at posts of duty in the Cooperating Country under this contract. In authorizing such per diem rates, the Mission Director shall consider the particular circumstances involved with respect to each such short-term employee including the extent to which meals and/or lodging may be made available without charge or at nominal cost by an agency of the United States Government or of the Cooperating Government, and similar factors.

(c) *Temporary lodging allowance.* Temporary lodging allowance is a quarters allowance granted to an employee for the reasonable cost of temporary quarters incurred by the employee and his family for a period not in excess of (i) three months after first arrival at a new post in a foreign area or a period ending with the occupation of residence (permanent) quarters, if earlier, and (ii) one (1) month immediately preceding final departure from the post subsequent to the necessary vacating of residence quarters. The Contractor will be reimbursed for payments made to employees and authorized dependents for temporary lodging allowance, in lieu of living quarters allowance, not to exceed the amount set forth in the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 120, as from time to time amended.

(d) *Post allowance.* Post allowance is a cost-of-living allowance granted to an employee officially stationed at a post where the cost of living, exclusive of quarters cost, is substantially higher than in Washington,

best copy available

pages tightly bound

D.C. The Contractor will be reimbursed for payments made to employees for post allowance not to exceed those paid AID employees in the Cooperating Country, in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 220, as from time to time amended.

(e) *Supplemental post allowance.* Supplemental post allownce is a form of post allowance granted to an employee at his/her post when it is determined that assistance is necessary to defray extraordinary subsistence costs. The Contractor will be reimbursed for payments made to employees for supplemental post allowance not to exceed the amount set forth in the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 230, as from time to time amended.

(f) Educational allowance. Educational allowance is an allowance to assist an employee in meeting the extraordinary and necessary expenses, not otherwise compensated for, incurred by reason of his/her service in a foreign area in providing adequate elementary and secondary education for his/her children. The Contractor will be reimbursed for payments made to regular employees for educational allowances for their dependent children in amounts not to exceed those set forth in the Standardized (Regulations Government Civilians, Foreign Areas), Chapter 270, as from time to time amended.

(g) *Educational travel.* Educational travel is travel to and from a school in the United States for secondary education (in lieu of an educational allowance) and for college education. The Contractor will be reimbursed for payments made to regular employees for educational travel for their dependent children provided such payment does not exceed that which would be payable in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 280, as from time to time amended. Educational travel shall not be authorized for regular employees whose assignment is less than two years.

(h) *Separate maintenance allowance.* Separate maintenance allowance is an allowance to assist an employee who is compelled, by reason of dangerous, notably unhealthful, or excessively adverse living conditions at his/her post of assignment in a foreign area, or for the convenience of the Government, to meet the additional expense of maintaining his/her dependents elsewhere than at such post. The Contractor will be reimbursed for payments made to regular employees for a separate maintenance allowance not to exceed that made to Aid employees in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 260, as from time to time amended.

(i) *Payments during evacuation.* The Standardized Regulations (Government Civilians, Foreign Areas) provide the authority for efficient, orderly, and equitable procedure for the payment of compensation, post differential and allowances in the event of an emergency evacuation of employees or their dependents, or both, from duty stations for military or other reasons or because of imminent danger to their lives. If evacuation has been authorized by the Mission Director the Contractor will be reimbursed for payments made to employees and authorized dependents evacuated from their post of assignment in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 600, and the Federal Travel Regulations, as from time to time amended.

(j) *Danger pay allowance.* (1) The contractor will b[illegible]bursed for payments made to its empl[illegible]r danger pay not to exceed that pai[illegible]ployees in the cooperating country, in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 650, as from time to time amended.

(2) Danger pay is an allowance that provides additional compensation above basic compensation to an employee in a foreign area where civil insurrection, civil war, terrorism or wartime conditions threaten physical harm or imminent danger to the health or well-being of the employee. The danger pay allowance is in lieu of that part of the post differential which is attributable to political violence. Consequently, the post differential may be reduced while danger pay is in effect to avoid dual crediting for political violence.

[49 FR 13259, Apr. 3, 1984, as amended at 51 FR 11450, Apr. 3, 1986; 53 FR 50632, Dec. 16, 1988]

752.7029 Post privileges.

For use in all AID contracts involving performance overseas.

POST PRIVILEGES (APR. 1984)

(a) Health room services of the same type that are normally provided to AID direct-hire U.S. citizen employees are generally available only for U.S. citizen contractor or subcontractor employees and their authorized dependents (regardless of citizenship) at the post of duty. These services do not include hospitalization, or predeparture or end of tour medical examinations. The services do include such medications as may be available; immunizations and preventive health measures; diagnostic examinations and advice; emergency treatment; and home visits as medically indicated.

(b) Privileges such as the use of APO, PX's, commissaries, and officer's clubs are established at posts abroad pursuant to agreements between the U.S. and Cooperating Governments. These facilities are intended for and usually limited to members of the official U.S. establishment including the Embassy, AID Mission, U.S. Information Service, and the Military. Normally, the agreements do not permit these facilities to be made available to nonofficial Americans.

752.7030 Inspection trips by contractor's officers and executives.

For use in cost reimbursement contracts with an educational institution involving performance overseas.

INSPECTION TRIPS BY CONTRACTOR'S OFFICERS AND EXECUTIVES (APR. 1984)

Provided it is approved by the Mission Director, the Contractor may send the Campus Coordinator, a professional member of its staff as an alternate to the Campus Coordinator, or such of its senior officials (e.g., president, vice presidents, deans, or department heads) to the Cooperating Country as may be required to review the progress of the work under this contract. Except for the Campus Coordinator or his/her alternate, no direct salary charges will be paid hereunder with respect to any such officials.

752.7031 Leave and holidays.

For use in all AID cost-reimbursement contracts for technical or professional services.

LEAVE AND HOLIDAYS (OCT. 1989)

(a) *Vacation leave.* (1) The Contractor may grant to its employees working under this contract vacations of reasonable duration in accordance with the Contractor's practice for its employees, but in no event shall such vacation leave be earned at a rate exceeding 26 work days per annum. Reimbursement for vacation leave is limited to the amount earned by employees while serving under this contract.

For regular employees during their tour of duty in the Cooperating Country, vacation leave is provided under this contract primarily for purposes of affording necessary rest and recreation. The Contractor's Chief of Party, the employee and the Cooperating Country institution associated with this project shall develop vacation leave schedules early in the employee's tour of duty taking into consideration project requirements, employee preference and other factors.

(2) Leave taken during the concluding weeks of an employee's tour shall be included in the established leave schedule and be limited to that amount of leave which can be earned during a twelve-month period unless approved in accordance with paragraph (a)(3) of this clause.

(3) Vacation leave earned but not taken by the end of the employee's tour pursuant to paragraphs (a) (1) and (2) of this clause will be forfeited unless the requirements of the project precluded the employee from taking such leave, and the Contracting Officer (with the endorsement of the Mission) approves one of the following as an alternative:

(i) Taking, during the concluding weeks of the employee's tour, leave not permitted under (a)(2) of this section, or

(ii) Lump-sum payment for leave not taken provided such leave does not exceed the number of days which can be earned by the employee during a twelve-month period.

(b) *Sick Leave.* Sick leave is earned by employees in accordance with the Contractor's usual practice but not to exceed 13 work days per annum or 4 hours every 2 weeks. Additional sick leave after use of accrued vacation leave may be advanced in accordance with Contractor's usual practice, if in the judgment of the Contractor's Chief of Party it is determined that such additional leave is in the best interest of the project. In no event shall such additional leave exceed 30 days. The Contractor agrees to reimburse AID for leave used in excess of the amount earned during the employee's assignment under this contract. Sick leave earned and unused at the end of a regular tour of duty may be carried over to an immediately-succeeding tour of duty under this contract. The use of home leave authorized under this clause shall not constitute a break in service for the purpose of sick leave carry-over. Contractor employees will not be compensated for unused sick leave at the completion of their duties under this contract.

(c) *Home leave.* (1) Home leave is leave earned for service abroad for use only in the United States, in the Commonwealth of Puerto Rico, or in the possessions of the United States.

(2) A regular employee who is a U.S. citizen or resident and has served at least 2 years overseas, as defined in paragraph (c)(4) of this clause, under this contract and has not taken more than 30 workdays leave (vacation, sick, or leave without pay) in the United States, may be granted home leave of not more than 15 calendar days for each such year of service overseas, provided that such regular employee agrees to return overseas upon completion of home leave under an additional 2 year appointment, or for a shorter period of not less than 1 year of overseas service under the contract if the Mission Director has approved in advance. Home leave must be taken in the United States, the Commonwealth of Puerto Rico,

or the possessions of the United States; any days spent elsewhere will be charged to vacation leave or leave without pay.

(3) Notwithstanding the requirement in paragraph (c)(2), of this clause, that the Contractor's regular employee must have served 2 years overseas under this contract to be eligible for home leave, Contractor may grant advance home leave to such regular employee subject to all of the following conditions:

(i) Granting of advance home leave would in each case serve to advance the attainment of the objectives of this contract;

(ii) The regular employee shall have served a minimum of 18 months in the Cooperating Country on his/her current tour of duty under this contract; and

(iii) The regular employee shall have agreed to return to the Cooperating Country to serve out the remainder of his/her current tour of duty and an additional 2 year appointment under this contract, or such other additional appointment of not less than 1 year of overseas service as the Mission Director may approve.

(4) The period of service overseas required under paragraph (c)(2) or paragraph (c)(3) of this clause shall include the actual days spent in orientation in the United States (less language training) and the actual days overseas beginning on the date of departure from the United States port of embarkation on international travel and continuing, inclusive of authorized delays en route, to the date of arrival at the United States port of debarkation from international travel. Allowable vacation and sick leave taken while overseas, but not leave without pay, shall be included in the required period of service overseas. An amount equal to the number of days vacation and sick leave taken in the United States, the Commonwealth of Puerto Rico, or the possessions of the United States will be added to the required period of service overseas.

(5) Salary during travel to and from the United States for home leave will be limited to the time required for travel by the most expeditious air route. The Contractor will be responsible for reimbursing AID for salary payments made during home leave if in spite of the undertaking of the new appointment the regular employee, except for reasons beyond his/her control as determined by the Contracting Officer, does not return overseas and complete the additional required service. Unused home leave is not reimbursable under this contract.

(6) To the extent deemed necessary by the Contractor, regular employees in the United States on home leave may be authorized to spend not more than 5 days in work status for consultation at home office/campus or at AID/Washington before returning to their post of duty. Consultation at locations other than AID/Washington or home office/campus, as well as any time in excess of 5 days spent for consultation, must be approved by the Mission Director or the Contracting Officer.

(7) Except as provided in the schedule or approved by the Mission Director or the Contracting Officer, home leave is not authorized for TCN or CCN employees.

(d) *Holidays.* Holidays for Contractor employees serving in the United States shall be in accordance with the Contractor's established policy and practice. Holidays for Contractor employees serving overseas should take into consideration local practices and shall be established in collaboration with the Mission Director.

(e) *Military leave.* Military leave of not more than 15 calendar days in any calendar year may be granted in accordance with the Contractor's usual practice to each regular employee whose appointment is not limited to 1 year or less and who is a reservist of the United States Armed Forces, provided that such military leave has been approved in advance by the cognizant Mission Director or Assistant Administrator. A copy of any such approval shall be provided to the Contracting Officer.

(f) *Leave Records.* The Contractor's leave records shall be preserved and made available as part of the contractor's records which are required to be preserved and made available by the Examination of Records by the Comptroller General and Audit clauses of this contract.

(End of Clause)

[54 FR 46392, Nov. 3, 1989]

§ 752.7032 International travel approval and notification requirements.

For use in any AID contract requiring international travel.

INTERNATIONAL TRAVEL APPROVAL AND NOTIFICATION REQUIREMENTS (JAN. 1990)

Prior written approval by the Contracting Officer is required for all interrnational travel directly and identifiably funded by AID under this contract. The Contractor shall therefore present to the Contracting Officer an itinerary for each planned international trip, showing the name of the traveler, purpose of the trip, origin/destination (and intervening stops), and dates of travel, as far in advanced of the proposed travel as possible, but in no event less than three weeks before travel is planned to commence. The Contracting Officer's prior written approval may be in the form of a letter or telegram or similar device or may be specifically incorporated into the schedule of the contract. At least one week prior to commencement of approved international travel, the Contractor shall notify the cognizant Mission, with a copy to the Contracting Officer.

of planned travel, identifying the travellers and the dates and times of arrival.

(End of Clause)

[55 FR 6805, Feb. 27, 1990]

PART 753—FORMS

Subpart 753.1—General

753.107 Obtaining forms.

Subpart 753.2—Prescription of Forms

753.270 Prescription of AID Forms.

Subpart 753.3—Illustrations of Forms

753.300 Scope of Subpart.

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979 44 FR 56673, 3 CFR 1979 Comp., p. 435.

SOURCE: 53 FR 50632, Dec. 16, 1988, unless otherwise noted.

Subpart 753.1—General

753.107 Obtaining forms.

Copies of any AID Form referenced in the AIDAIR may be obtained from the Agency for International Development, Washington, DC 20523, Attention: SER/MO/CPM/M, Distribution, Room B-929 N.S., or from the congnizant Contracting Officer.

Subpart 753.2—Prescription of Forms

752.270 Prescription of AID forms.

The requirements for use of AID forms are contained in Parts 701 through 752 where the subject matter applicable to the form is addressed.

Subpart 753.3—Illustration of Forms

753.300 Scope of subpart.

AID forms are not illustrated in the AIDAR. Copies of any AID form prescribed in the AIDAR may be obtained as provided in 753.107.

Appendices to Chapter 7

APPENDIX A—RESPECTIVE ROLES OF CONTRACTING AND OTHER PERSONNEL IN THE AID PROCUREMENT PROCESS

1. Basic Policy

Only a contracting officer, designated to enter into contracts and make the determinations and findings related thereto (or an authorized representative of the contracting officer acting within the limits of his/her authority), may bind the United States Government to a contract, or direct or authorize a contractor to proceed with work.

2. Planning, Competition, Negotiation, and Award

(a) Preaward technical discussions with potential contractors should be conducted in such a manner as to preclude the assumption by any potential contractor that a commitment has been made. AID employees are responsible for insuring that no unfair competitive advantage is afforded one contractor over any other contractor in competing for Agency contracts. In this connection, discussions with prospective contractors prior to the final selection of the contractor and commencement of negotiations by the contracting officer must be conducted with the greatest discretion. Under no circumstances should the specific amount of funds which the Agency has available to support a contract be made known to a prospective contractor. No AID employee is authorized to dilute the Agency's negotiation position prior to or during an "arm's length" negotiation conducted between AID and the contractors with whom it does business. The requirement for preservation of the Agency's negotiation position must be scrupulously observed whether the procurement is to be negotiated with a single, non-competitive source or whether it is to be negotiated on the basis of multiple competitive proposals. It is advisable to involve the contracting officer in the project planning cycle as early as possible, and to insure that he/she or his/her representative is either present at any meeting with prospective contractors, or is consulted prior to such a meeting.

(b) Contracting personnel act upon requirements which are formulated by the planning, technical, and research offices of the Agency. Contracting officers obtain the information they need on technical requirements by questions and discussions with the planning, technical, and research offices of the Agency. If a contract is to be tenable, the end result which is desired must be described with completeness and exactitude. The scope of the work must be explicitly stated; otherwise the contracting officer cannot assure terms in a contract by which the desired action can be enforced. If the requiring office cannot provide a point of departure in these terms and deliver to the contracting officer a clear-cut description of the purpose and outline the limits of the scope, results may be disappointing and the possibility of deferring the project until these elements can be given more concrete dimensions should be considered. Finally, the requiring office should insure that the scope of work and funding information are delivered to the contracting officer with sufficient lead time to allow for proper preparation and planning of the procurement.

(c) One of the paramount duties of the contracting officer is to ensure full and open competition for any planned procurement. The procedures for procurement by sealed bid, or for procurement by negotiation, or for procurement by other than full and open competition differ; the contracting officer must determine the proper method of procurement and contract type, keeping the requirements for full and open competition in mind. The technical office has a continuing responsibility to assist the contracting officer in this effort to ensure full and open competition. This responsibility should be exercised through proper planning to allow sufficient lead time, and preparation of scopes of work designed to encourage full and open competition by avoiding specifications, descriptions, or work statements which could unnecessarily restrict competition.

3. *Contract Administration*

Meetings to discuss contract matters with contractors should be preceded by sufficient advance notification to all parties, including the contracting officer, to permit advance arrangements for the attendance at such meetings. Technical personnel shall not hold discussions of contract problems with contractors or technical problems with contractual implications without arranging for attendance by contracting personnel. Once a meeting with a contractor has been agreed upon and the issues have been made known to all involved parties, an internal AID meeting should take place between technical and contracting personnel, with the Country Desk representative and such other personnel in attendance as may be necessary, to establish an AID position or line of inquiry to be followed in the meeting with the contractor. If differences of opinion arise among AID personnel in the meeting with the contractor, such differences should never be discussed in the meeting with the contractor. AID personnel shall adjourn to resolve privately any such differences of opinion, and resume discussions with the contractor only when the AID position is consolidated. The AID individual designated to chair meeting with a contractor should be selected prior to the meeting with the contractor. Depending upon the issues to be discussed, whether primarily technical or primarily contractual, the chairman should be designated from either the technical office or the contracting office.

(Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435)

[49 FR 13286, Apr. 3, 1984, as amended at 50 FR 16088, Apr. 24, 1985]

APPENDIX B—[RESERVED]

APPENDIX C—LOGISTIC SUPPORT OVERSEAS TO AID-DIRECT CONTRACTORS

1. *General*

(a) *Purpose.* In furtherance of AID's objectives to: (1) Increase the utilization of contractors in accordance with section 621 of the Foreign Assistance Act of 1961, as amended, (FAA), (2) reduce the administration burden on the AID establishment in Cooperating Countries, and (3) ensure, in accordance with section 636(h) of the FAA, that to the maximum extent possible local costs are met from Cooperating Country funds or United States (U.S.) Government-owned local currency rather than from U.S. dollars, the following policies govern the financing and provision in kind of logistic support overseas to AID-direct contractors.

(b) *Scope.* "Logistic support overseas" means the financing of or furnishing to a contractor, its employees, and their dependents (in accordance with the provisions of the contract) items such as transportation of personnel, personal goods and commodities; quarters, furnishings, equipment, utilities, and supplies for residence and office; and maintenance and other supporting services, including medical facilities.

2. *Policy*

(a) *Financing of logistic support.* (1) Local Currency Financing. Consistent with the requirements of AID Handbook 19, Financial Management, local currencies are to be used wherever feasible in lieu of dollars to defray the costs of contractor logistic support, whether such support is arranged for by the contractor, the Cooperating Country, or AID. Such local currencies will be contributed from the following sources in descending order of preference:

(i) The Cooperating Country's own budgetary or private resources;

(ii) Cooperating Country-owned local currency generated through AID or Pub. L. 480 programs; and

(iii) U.S. Government-owned country-use local currency generated through AID or Pub. L. 480 programs.

(2) *Dollar financing.* AID dollars are used to finance logistic support overseas only when no reasonable alternative exists by which such support can be financed with local currency provided in kind.

(b) *Arrangements for logistics support.* Each mission should assess the local logistical support situation and determine which method is best suited for its program or individual projects. While the following three options are listed in descending order of preference, the Mission is encouraged to use the option which is in the best interest of the project:

(1) Arrangements by the contractor itself where feasible and reasonably economical. (It is assumed that this test will be met in the case of virtually all construction contracts and in most of the larger engineering and technical assistance contracts.)

(2) Arrangements by the Cooperating Country where these would be timely, adequate, and feasible in terms of the country's economic and administrative resources.

(3) Arrangements by the Mission alone or jointly with either or both of the other parties, in those cases where the Mission Director determines that adequate and timely logistic support at reasonable cost cannot be assured through the other options. In such cases, and when direct-hire resources are inadequate, the Mission is encouraged wherever feasible, to contract for assistance in providing logistic support. Guidance on logistic support contracts should be obtained from SER/OP and GC.

(c) *Medical facilities.* AID and the Department of State have an agreement whereby the latter furnishes certain medical services, *on an availability basis,* to all eligible U.S. citizen contract personnel performing economic assistance functions abroad under the Foreign Assistance Act, and to their authorized dependents overseas with funding via Shared Administrative Support (SAS) Budgets. These services are provided at post to such personnel to the same extent as for AID direct-hire personnel. They are provided at no cost to the contractor or to the personnel. The medical services to be provided exclude: (1) Evacuation or hospitalization, and (2) entrance, in-service, fitness for duty, and separation medical examinations.

(1) *Eligible personnel.* (i) Eligible contractor personnel are those U.S. citizens serving abroad, and their authorized dependents, who are engaged under a contract between a contractor and AID or who are engaged under a subcontract thereto.

(ii) Employees of other U.S. Government agencies serving under Participating Agency Service Agreement (PASA) with AID are also eligible pursuant to the terms of General Agreements between AID and their parent agencies.

(iii) U.S. citizens serving under Cooperating Country contracts financed from AID loan or grant funds are not "AID contractor employees" and thus not eligible, except with approval of the Ambassador. Third country national employees of AID contractors are not U.S. citizens and thus are not eligible, except with approval of the Ambassador. Americans serving under operational expert (OPEX) type contracts to which AID is not a signatory are also not "AID contractor employees." Most OPEX employees are provided a lump-sum amount to finance their participation in a group health program in lieu of receiving any U.S. Government health services.

(iv) AID or other direct-hire U.S. Government employees working under formal detail to multilateral or other non-U.S. agencies obtain health services on the same basis as their non-U.S. co-workers unless the provisions governing detail of the U.S. employees specifically provide for their access to available U.S. Government facilities.

(v) It is recognized that emergency situations will arise involving OPEX or other Americans who are not "AID contractor personnel" as defined above. Such cases are to be handled by the Medical Officer or other post officials pursuant to their procedures for handling an emergency health problem of any non-official American requesting assistance.

(2) *Services to be provided.* Embassy physician, nurse, and health room services are provided, in countries where and when these are available, including:

(i) Immunizations and preventive health measures;

(ii) Diagnostic examinations and advice;

(iii) Emergency treatment;

(iv) Home visits as medically indicated.

(d) *Other post privileges.* Privileges such as the use of APO, PX's, commissaries, and officer's clubs are established at posts abroad pursuant to agreements between the U.S. and Cooperating Governments. Normally, these facilities *are not* available to contractor employees. However, in those cases where the facilities are open to contractor personnel, they may be used.

(e) *Uniformity.* Every effort should be made by each Mission to foster the development of country-wide standards for comparable classes of contractors. In all instances, logistic support is to be provided at the minimum level necessary to assure efficient, economical, and effective contractor performance.

(f) *Exceptions.* Exceptions from these policies, except as permitted by paragraph 2(b)(3) above, are made in writing by the responsible Assistant Administrator or his/her designee for such purposes.

3. Contract Implementation

Each PIO/T shall indicate on page 3 each type of logistic support which is to be made available, either in cash or in kind, by the Cooperating Country, the Mission, and the contractor itself. The contracting officer shall ensure that the contract reflects the information contained in the PIO/T.

4. Additional Instructions for Medical Support

(a) *Notifications.* (1) The AID contracting officer shall notify the contractor of any potentially available medical benefits prior to the execution of the contract.

(2) The Mission Executive Officer notifies the contractor's Chief of Party at the post of the locally available medical benefits.

(b) *Identification of eligible persons.* The Mission Executive Officer provides each eligible contractor employee and dependent with appropriate identification for use at Embassy medical facilities.

(c) *Records and insurance.* (1) The Embassy medical unit maintains an appropriate register of visits to the unit. The information recorded includes the name of the contractor employee or dependent treated, the contractor's name and contract number, date of visit, and a brief description of the reason for the visit (e.g., medical consultation, injury, medical briefing, immunization). Periodically a copy of this register is forwarded to the Mission Executive Officer.

(2) If medical service provided to a contractor employee or his/her authorized dependents by the Embassy medical unit is eligible for recovery from an insurance company, the contractor employee shall file an appropriate claim with the insurance company and so notify the Mission Executive Officer in writing. The contractor employee pursues the claim for reimbursement. Amounts recovered are forwarded to the Mission Executive Officer for the account of the medical unit in accordance with AID regulations.

(Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435)

[49 FR 13287, Apr. 3, 1984, as amended at 51 FR 20652, June 6, 1986]

APPENDIX D—DIRECT AID CONTRACTS WITH U.S. CITIZENS OR U.S. RESIDENT ALIENS FOR PERSONAL SERVICES ABROAD

1. General

(a) *Purpose.* This appendix sets forth the authority, policy, and procedures under which AID contracts with U.S. citizens or U.S. resident aliens for personal services abroad.

(b) *Definitions.* For the purpose of this appendix:

(1) "Personal services contract (PSC)" means a contract which establishes an employer-employee relationship for the performance of services personally by the contractor. The services may include general continuing services as well as specifically identifiable tasks.

(2) "Employer-employee relationship" means an employment relationship in which the employer supervises or has the power to supervise the performance of the work including, for example, the manner in which the work is to be performed, the days of the week and hours of the day in which it is to be performed, and where the work is to be performed. Another indication of this relationship is the provision by the employer of workspace and basic tools and materials for use in accomplishing the work.

(3) "Non-personal services contract" means a contract which directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task and which establishes an independent contractor relationship between the contractor and the activity contracting for the services.

(4) "Independent contractor relationship" means a contract relationship in which the contractor is not subject to the supervision and control prevailing in relationships between the Government and its employees. Under these relationships, the Government does not normally supervise the performance of the work, the manner in which it is to be performed, the days of the week or hours of the day in which it is to be performed, or the location of performance.

(5) "Resident Hire" means a U.S. citizen who, at the time they are hired as a PSC, resides in the cooperating country (a) as a spouse or dependent of a U.S. citizen employed by a U.S. Government Agency or under any U.S. Government-financed contract or agreement, or (b) for reasons other than for employment with a U.S. Government Agency or under any U.S. Government-financed contract or agreement. A U.S. citizen for purposes of this definition also includes persons who at the time of

contracting are lawfully admitted permanent residents of the United States.

(6) "U.S. resident alien" means a non-U.S. citizen lawfully admitted for permanent residence in the United States.

(7) "Abroad" means outside the United States and its territories and possessions.

(8) "A.I.D. direct hire employees" means civilian employees appointed under A.I.D. Handbook 25 procedures.

2. Legal Basis

(a) Section 635(b) of the Foreign Assistance Act of 1961, as amended (hereinafter referred to as the "FAA"), provides the Agency's basic contracting authority for nonpersonal services.

(b) Section 636(a)(3) of the FAA (22 U.S.C. 2396(a)(3)) authorizes the Agency to enter into personal services contracts with individuals for personal services abroad and provides further that such individuals" . . . shall not be regarded as employees of the U.S. Government for the purpose of any law administered by the Civil Service Commission."[1]

3. Applicability

(a) This appendix applies to all personal services contracts with U.S. citizens or U.S. resident aliens to provide assistance abroad. under section 636(a)(3) of the FAA.

(b) This appendix does not apply to:

(1) Nonpersonal services contracts with U.S. citizens or U.S. resident aliens; such contracts are covered by the basic text of the FAR and the AIDAR.

(2) Personal services contracts with individual cooperating country nationals (CCNs) or third-country nationals (TCNs); such contracts are covered by Appendix J of this chapter.

(3) Other personal services arrangements covered by *AID Handbook 25—Employment and Promotion.*

(4) Interagency agreements (e.g., PASAs and RSSAs) covered by *AID Handbook 12—Use of Federal Agencies.*

4. Policy

a. *General.* AID may finance, with either program or operating expense (OE) funds, the cost of personal services as part of the Agency's program of foreign assistance by entering into a direct contract with an individual U.S. citizen or U.S. resident alien for personal services abroad.

(1) *Program funds.* Program funds may be obligated for periods up to five years where necessary and appropriate to the accomplishment of the tasks involved.

(2) *Operating expense funds.* Operating funds may be obligated for periods not to exceed twenty-four months where necessary and appropriate to the accomplishment of the tasks involved.

(b) *Limitations on personal services contracts.*

(1) Personal services contracts may only be used when adequate supervision is available.

(2) Personal services contracts may be used for commercial activities. Commercial activities provide a product or service which could be obtained from a commercial source. See Attachment A of OMB Circular A-76 for a representative list of such activities.

(3) Personal services contracts may be used for Governmental functions (defined by OMB Circular A-76 as functions so intimately related to the public interest as to mandate performance by Government employees) *except:*

(i) Negotiating on behalf of the United States with foreign governments and public international organizations. Note: Negotiating on behalf of the United States with private individuals and entities is permitted.

(ii) Entering into any agreement (e.g., loan, grant, contract) on behalf of the United States.

(iii) Making decisions involving governmental functions such as planning, budget, programming and personnel selection. Services will be limited to making recommendations with final decision-making authority reserved for authorized AID direct-hire employees.

(iv) Supervision of AID direct-hire U.S. citizen employees.

(c) *Withholdings and Fringe Benefits.*

(1) Personal services contractors (PSCs) are Government employees and are therefore subject to social security (FICA) and Federal income tax (FIT) withholdings. As employees, they are ineligible for the "foreign earned income" exclusion under the IRS regulations (see 26 CFR 1.911-3(c)(3)).

(2) Personal Services Contractors are treated on par with other Government employees, *except* for programs based on any law administered by the Federal Office of Personnel Management (e.g., incentive awards, life insurance, health insurance, and retirement programs covered by 5 CFR Parts 530, 531, 831, 870, 871, and 890). While PSCs are ineligible to participate in any of these programs, the following fringe benefits are provided as a matter of policy:

(i) The employer's FICA contribution for retirement purposes;

(ii) A contribution against the actual costs of the PSC's annual health insurance costs. Such contribution: (1) Shall not exceed 50% of the actual costs of the PSC's annual health insurance and (2) shall not exceed the maximum U.S. Government contribution for direct-hire personnel as announced annually by the Office of Personnel Management.

---

[1] The Civil Service Commission is now the Federal Office of Personnel Management.

(iii) A maximum contribution of up to 50% against the actual costs of the PSC's annual life insurance costs, not to exceed $500.00 per year.

(iv) PSCs shall receive the same percentage pay comparability adjustment as U.S. Government employees;

(v) PSCs shall receive the following allowances and differentials provided in the State Department's Standardized Regulations (Government Civilians Foreign Areas) on the same basis as direct hire U.S. Government employees (except for resident hires, see paragraph 4(g) and section 11, General Provisions. Definitions Clause 26, "Resident Hire Personal Services Contractors"):

(A) Temporary lodging allowance (Section 120),[2]

(B) Living quarters allowance (Section 130),[2]

(C) Post allowance (Section 220),[2]

(D) Supplemental post allowance (Section 230),[2]

(E) Separate maintenance allowance (Section 260),[3]

(F) Education allowance (Section 270),[3]

(G) Educational travel (Section 280),[3]

(H) Post differential (Chapter 500),

(I) Payments during evacuation/authorized departure (Section 600), and

(J) Danger pay (Section 650).

Any allowance or differential that is not *expressly stated* in this paragraph is not authorized for any PSC;

(vi) PSCs and their authorized dependents may be entitled to health room services of the same type that are normally provided to AID direct-hire U.S. citizen employees. See General Provision entitled "Post of Assignment Privileges."

(vii) PSCs are eligible to receive benefits for injury, disability, or death under the Federal Employees' Compensation Act since the law is administered by the Department of Labor, not the Office of Personnel Management.

(viii) PSCs are eligible to earn four hours of annual leave and four hours of sick leave for each two week period. However, PSCs with previous PSC service (not previous U.S. Government civilian or military service) earn *either* six hours of annual leave for each two week period if their previous PSC service exceeds 3 years, *or* eight hours of annual leave for each two week period if their previous PSC service exceeds 15 years.

(d) A PSC who is a spouse of current or retired Civil Service, Foreign Service, or Military Service member and who is covered by their spouse's Government health or life insurance policy is ineligible for the contribution under paragraph 4(c)(2)(ii) or (2) (iii) of this appendix.

(e) Retired U.S. Government employees may be awarded personal services contracts without any reduction in or offset against their Government annuity.

(f) *Salary Setting.*

(1) Salaries for personal services contractors shall be based on the salary established for the position being recruited for or the PSC's current earnings (as adjusted under (f)(2) and (f)(3) below), except as provided in paragraphs (f)(4) through (f)(7) below. Current earnings must be certified by the contractor on the SF 171, "Personal Qualifications Statement" (see paragraph 6(b)(3) of this appendix); the form must be retained in the permanent contract file.

(2) As a rule, up to a 3 percent increase above current earnings may be given. However, a 3 percent increase is awarded only to a PSC whose earnings are based on a period of twelve months or more; 2 percent for established earnings of less than twelve months but not less than four months; or 1 percent for established earnings during the past four months.

(3) Additional percentages may be given for the following factors. If a PSC has worked in a developing country for more than two years, an additional 1 percent is awarded. Education related to the area of specialization and above the minimum qualification required warrants an additional 1 percent, and those specialties for which there is keen competition in the employment market or a serious shortage category nationwide are awarded an additional 2 percent. In addition, related technical experience over 5 years increases the percentage by 1 and over ten years by 3.

(4) When an applicant has no current earnings history (e.g., a person returning to the workforce after an absence of a number of years) or when an applicant's current earnings history doesn't accurately reflect the applicant's job market worth (e.g., a Peace Corps volunteer), the salary set for the position should be used, notwithstanding the lack of a current earnings history, provided that the applicant has the full qualifications for the job and could command a similar salary in the open job market.

(5) All requests for an initial rate of pay above 10 percent over current earnings must be approved in writing by the appropriate Regional Assistant Administrator or Mission Director. Current earnings are actual earnings for work reasonably related to the position for which the applicant is being considered.

---

[2] Mission Directors may authorize per diem in lieu of these allowances.

[3] These allowances are not authorized for short tours (i.e., less than a year).

(6) Salaries in excess of the FS-1 level must also be approved by the appropriate Regional Assistant Administrator or Mission Director, as provided for in Appendix G of this chapter.

(g) *Resident Hire Personal Services Contractors.*

Resident hire PSCs are not eligible for any fringe benefits (except contributions for FICA, health insurance, and life insurance), including differentials and allowances, unless such individuals can demonstrate to the satisfaction of the contracting officer that they have received similar benefits and allowances from their immediately previous employer in the cooperating country or the Mission Director may determine that payment of such benefits would be consistent with the Mission's policy and practice and would be in the best interests of the U.S. Government.

5. *Soliciting for Personal Services Contracts*

(a) *Project Officer's responsibilities.* The Project Officer will prepare a written detailed statement of duties and a statement of minimum qualifications to cover the position being recruited for. The statement shall be included in the procurement request (e.g., A.I.D. Form 1350-1, Project Implementation Order/Technical Services (PIO/T)); the request shall also include the following additional information as a minimum:

(1) The specific foreign location(s) where the work is to be performed, including any travel requirements (with an estimate of frequency);

(2) The length of the contract, with beginning and ending dates, plus any options for renewal or extension;

(3) The basic education, training, experience, and skills required for the position;

(4) An estimate of what a comparable GS/FS position should cost, including basic salary, allowances, and differentials, if appropriate;

(5) A list of Government or host country furnished items (e.g., housing); and

(6) If the PSC will be providing consulting services, include the justification required by AIDAR 737.270(b).

(b) *Contracting Officer's Responsibilities.*

(1) The Contracting Officer will prepare the solicitation for personal services which shall contain:

(i) Three sets of SF 171s and 171As. (Upon receipt, one copy of each 171 and 171A shall be forwarded to the Project Officer.)

(ii) A detailed statement of duties or a completed position description for the position being recruited for.

(iii) A copy of the prescribed contract Cover Page, Contract Schedule, General Provisions and Additional General Provisions, if applicable, as well as the FAR clauses to be incorporated by reference.

(iv) A copy of Attachment 2C to Chapter 2 of A.I.D. Handbook 24, entitled Employee Responsibilities and Conduct.

(2) The Contracting Officer shall comply with the requirements of AIDAR 706.302-70(c) as detailed in paragraph 5(c) below.

(c) *Competition.*

(1) Under AIDAR 706.302-70(b)(1), personal services contracts are exempt from the requirements for full and open competition with two limitations that must be observed by Contracting Officers:

(i) Offers are to be requested from as many potential offerors as is practicable under the circumstances, and

(ii) A justification supporting less than full and open competition must be prepared in accordance with FAR 6.303.

(2) A class justification was approved by the A.I.D. Procurement Executive on January 20, 1987 which will satisfy the requirements of AIDAR 706.302-70(c)(2) for a justification in accordance with FAR 6.303 subject to the following conditions for use for personal services contracts with U.S. citizens or U.S. resident aliens:

(i) If recruited from the United States, the position was either publicized in a U.S. trade/professional/ technical publication, the Commerce Business Daily or a newspaper or similar publication, or the procedure in paragraph (iii) below was followed.

(ii) If recruited locally, the position was publicized in the same way that the Mission announces direct hire U.S. citizen positions, or the procedure in paragraph (iii) below was followed.

(iii) As an alternative to the procedures in paragraphs (i) and (ii) above, at least 3 individuals were considered by consulting source lists (e.g., applications or resumes on hand) or conducting other informal solicitation.

(iv) A copy of the class justification (which was distributed to all A.I.D. Contracting Officers via Contract Information Bulletin) must be included in the contract file, together with a written statement, signed by the Contracting Officer, that the contract is being awarded pursuant to AIDAR 706.302-70(b)(1); that the conditions for use of this class justification have been met; and that the cost of the contract is fair and reasonable.

(3) Since the award of a personal services contract is based on technical qualifications, not price, and since the SF 171, "Personal Qualifications Statement", and SF 171A, "Continuation Sheet for Standard Form 171", are used to solicit for such contracts, FAR Subparts 15.4 and 15.5 and FAR Parts 52 and 53 are inappropriate and shall not be used. Instead, the solicitation and selection procedures outlined in this Appendix shall govern.

(4) If the appropriate competitive procedure in paragraph (2) above is not followed, the Contracting Officer must prepare a separate justification as required under AIDAR 706.302-70(c)(2).

6. Negotiating a Personal Services Contract

Negotiating a personal services contract is significantly different from negotiating a nonpersonal services contract because of the employer-employee relationship; therefore, the selection procedures are more akin to the personnel selection procedures.

(a) *Project Officer's responsibilities.* The Project Officer shall be responsible for reviewing and evaluating the applications (i.e., SF 171s) received in response to the solicitation issued by the Contracting Officer. If deemed appropriate, interviews may be conducted with the applicants before the final selection is submitted to the Contracting Officer.

(b) *Contracting Officer's responsibilities.*

(1) The Contracting Officer shall forward a copy of each SF 171 received under the solicitation to the Project Officer for evaluation.

(2) On receipt of the Project Officer's recommendation, the Contracting Officer shall conduct negotiations with the recommended applicant. Normally, the Contracting Officer shall negotiate only the salary (see the salary setting coverage in paragraph 4(f) of this Appendix). The terms and conditions of the contract, including differentials and allowances, are not negotiable or waivable without a properly approved deviation (see AIDAR 701.470). If the Contracting Officer can negotiate a salary that is fair and reasonable, then the award shall be made.

(3) The Contracting Officer shall use the certified salary history on the SF 171 as the basis for salary negotiations, along with the Project Officer's cost estimate.

(4) The Contracting Officer will obtain two copies of IRS Form W-4, Employee's Withholding Allowance Certificate from the successful applicant. (Upon receipt, the Contracting Officer will forward one copy of the W-4 to the office of the Controller.)

(5) The Contracting Officer will obtain four sets of SF 86, Security Investigation Data for Sensitive Position from the successful applicant if a security clearance is required for the position.

7. Executing a Personal Services Contract

Contracting activities, whether A.I.D./W or Mission, may execute personal services contracts, provided that the amount of the contract does not exceed the contracting authority that has been redelegated to them under Delegation of Authority No. 1103 "To the Assistant to the Administrator for Management, Concerning Acquisition Functions" (50 FR 23842), as amended (see AIDAR 702.170-10).

In executing a personal services contract, the contracting officer is responsible for insuring that:

(a) The proposed contract is within his/her delegated authority;

(b) A PIO/T covering the proposed contract has been received;

(c) The proposed scope of work is contractible, contains a statement of minimum qualifications from the technical office requesting the services, and is suitable for a personal services contract in that:

(1) Performance of the proposed work requires or is best suited for an employer-employee relationship, and is thus not suited to the use of a non-personal services contract;

(2) The scope of work does not require performance of any function normally reserved for Federal employees (see paragraph 4(b) of this appendix); and

(3) There is no apparent conflict of interest involved (if the contracting officer believes that a conflict of interest may exist, the question should be referred to the cognizant legal counsel).

(d) Selection of the contractor is documented and justified. AIDAR 706.302-70(b)(1) provides an exception to the requirement for full and open competition for personal services contracts abroad (see paragraph 5(c) of this Appendix);

(e) The standard contract format prescribed for personal services contracts (Sections 10, 11, 12 and 13 to AIDAR Appendix D) is used; or that any necessary deviations are processed as required by AIDAR 701.470. (NOTE: The prescribed contract format is designed for use with contractors who are residing in the U.S. when hired. If the contract is with a U.S. citizen residing in the cooperating country when hired, contract provisions governing physical fitness and travel/transportation expenses, and Additional General Provisions dealing with home leave, allowances, and orientation should be suitably modified (see paragraph 4(g) of this Appendix). These modifications are not considered deviations subject to AIDAR 701.470. Justification and explanation of these modifications is to be included in the contract file);

(f) Orientation is arranged in accordance with Additional General Provision 32;

(g) The contractor has submitted the names, addresses, and telephone numbers of at least two persons who may be notified in the event of an emergency (this information is to be retained in the contract file);

(h) The contract is complete and correct and all information required on the contract Cover Page (AID form 1420-36A) has been entered;

(i) The contract has been signed by the contracting officer and the contractor, and fully executed copies are properly distributed;

(j) The following clearances, approvals and forms have been obtained, properly completed, and placed in the contract file before the contract is signed by both parties:

(1) Security clearance, including the completed SF 86, to the extent required by A.I.D. Handbook 6, *Security;*

(2) Mission, host country, and project office clearance, as appropriate;

(3) Medical clearance(s) for the contractor and for each dependent who is authorized to travel to the overseas post based on a full medical examination(s) and certification of same by a licensed physician. The physician's certification must be in the possession of the contracting officer prior to any travel undertaken by contractor or his/her dependents;

(4) One original executed IRS Form W-4 entitled "Employee's Withholding Allowance Certificate" and one copy shall be obtained. The original shall be sent to the Controller of the paying office and one shall be placed in the contract file;

(5) The approval for any salary in excess of FS-1, in accordance with Appendix G of this chapter;

(6) A copy of the class justification or other appropriate explanation and support required by AIDAR 706.302-70, if applicable;

(7) Any deviation to the policy or procedures of this appendix, processed and approved under AIDAR 701.470;

(8) A fully executed SF 171;

(9) The memorandum of negotiation;

(k) Funds for the contract are properly obligated to preclude violation of the Anti-Deficiency Act, 31 U.S.C. 134 (the contracting officer ensures that the contract has been properly recorded by the appropriate accounting office prior to its release for the signature of the selected contractor);

(l) The contractor receives and understands Attachment 2C of Chapter 2, A.I.D. Handbook 24, *General Personnel Policy*, entitled "Employee Responsibilities and Conduct," and a copy is attached to each contract, as provided for in paragraph 2(c) of General Provision 2, Section 11;

(m) Agency conflict of interest requirements, as set out in Chapter 2D and 2F of A.I.D. Handbook 24, are met by the contractor prior to his/her reporting for duty;

(n) A copy of a Checklist for Personal Services Contractors which may be in the form set out above or another form convenient for the contracting officer, provided that a form containing all of the information described in this paragraph 7 shall be prepared for each PSC and placed in the contract file; and

(o) The block entitled, "Project No." on the Cover Page of the contract format is completed by inserting the four-segment project number as prescribed in A.I.D. Handbook 18, *Information Services.*

8. Post Audit

The Inspector General, or his/her designee, audits the personal services contracts of all contracting activities for the purpose of ensuring conformance to applicable policy and regulations.

9. Contracting Format

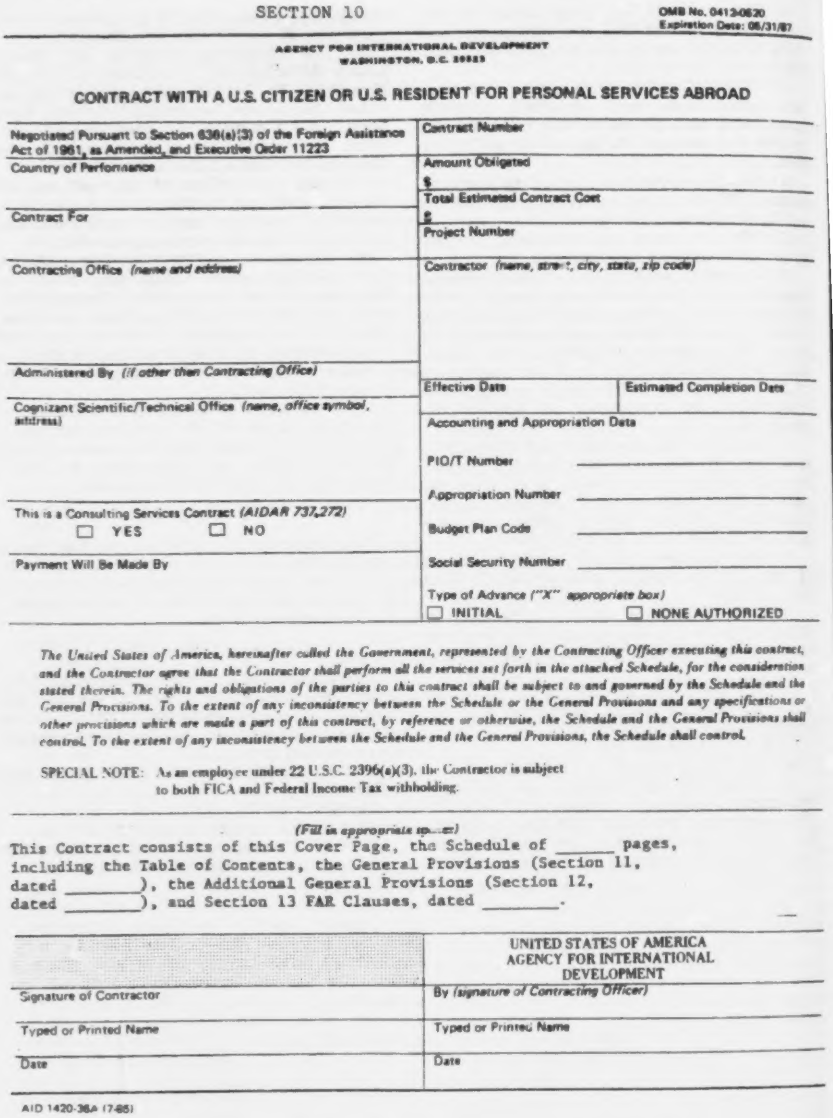
The prescribed Contract Cover Page, Contract Schedule, General Provisions, and Additional General Provisions for personal services contracts covered by this appendix are included as follows:

10. Form AID 1420-36, "Cover Page" and "Schedule"

11. "General Provisions"

12. "Additional Provisions"

13. FAR Clauses to be incorporated by reference in personal services contracts.



SECTION 10

OMB No. 0412-0520
Expiration Date: 08/31/87

AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C. 20523

CONTRACT WITH A U.S. CITIZEN OR U.S. RESIDENT FOR PERSONAL SERVICES ABROAD

Negotiated Pursuant to Section 636(a)(3) of the Foreign Assistance Act of 1961, as Amended, and Executive Order 11223	Contract Number
Country of Performance	Amount Obligated $ Total Estimated Contract Cost $
Contract For	Project Number
Contracting Office *(name and address)*	Contractor *(name, street, city, state, zip code)*
Administered By *(if other than Contracting Office)*	Effective Date / Estimated Completion Date
Cognizant Scientific/Technical Office *(name, office symbol, address)*	Accounting and Appropriation Data PIO/T Number ____________ Appropriation Number ____________ Budget Plan Code ____________ Social Security Number ____________
This is a Consulting Services Contract *(AIDAR 737.272)* ☐ YES ☐ NO	
Payment Will Be Made By	Type of Advance *("X" appropriate box)* ☐ INITIAL ☐ NONE AUTHORIZED

The United States of America, hereinafter called the Government, represented by the Contracting Officer executing this contract, and the Contractor agree that the Contractor shall perform all the services set forth in the attached Schedule, for the consideration stated therein. The rights and obligations of the parties to this contract shall be subject to and governed by the Schedule and the General Provisions. To the extent of any inconsistency between the Schedule or the General Provisions and any specifications or other provisions which are made a part of this contract, by reference or otherwise, the Schedule and the General Provisions shall control. To the extent of any inconsistency between the Schedule and the General Provisions, the Schedule shall control.

SPECIAL NOTE: As an employee under 22 U.S.C. 2396(a)(3), the Contractor is subject to both FICA and Federal Income Tax withholding.

(Fill in appropriate spaces)

This Contract consists of this Cover Page, the Schedule of ______ pages, including the Table of Contents, the General Provisions (Section 11, dated ________), the Additional General Provisions (Section 12, dated ________), and Section 13 FAR Clauses, dated ________.

	UNITED STATES OF AMERICA AGENCY FOR INTERNATIONAL DEVELOPMENT
Signature of Contractor	By *(signature of Contracting Officer)*
Typed or Printed Name	Typed or Printed Name
Date	Date

AID 1420-36A (7-85)

PRIVACY ACT STATEMENT

This information is provided pursuant to Public Law 93-579 (Privacy Act of 1974), December 31, 1974, for individuals who complete this form.

The Executive Office of the President, Office of Management and Budget has required that all departments and agencies comply with the reporting requirements of Section 6041 of the Internal Revenue Code. Section 6041 states that all departments and agencies making payments totalling $600.00 or more in one year to a recipient for services provided must be reported to the Internal Revenue Service (IRS). The SSN and all financial numbers will be disclosed to Agency for International Development (AID) payroll office personnel and personnel in the Department of the Treasury, Division of Disbursements. AID will use this SSN to complete Form W-2 of the Code on employee compensation. Disclosure by the personal services contractor of the SSN is necessary to obtain the services, benefits or processes provided by this contract. Disclosure of the SSN may be made outside AID (a) pursuant to any applicable routine use listed in AID's Notice for implementing the Privacy Act as published in the FEDERAL REGISTER, or (b) when disclosure by virture of a contract being a public document after signatures is authorized under the Freedom of Information Act.

Table of Contents

SCHEDULE

The Schedule on pages 2 through 5 consists of this Table of Contents and the following Articles:

Articles:
- Article I—Statement of Duties
- Article II—Period of Service Overseas
- Article III—Contractor's Compensation and Reimbursement in U.S. Dollars
- Article IV—Costs Reimbursable and Logistic Support
- Article V—Precontract Expenses
- Article VI—Additional Clauses

GENERAL PROVISIONS

The following provisions numbered as shown below omitting number(s) ——, are the General Provisions (GPs) of this Contract:

1. Definitions
2. Laws and Regulations Applicable Abroad
3. Physical Fitness
4. Workweek and Compensation (Pay Comparability Adjustments)
5. Leave and Holidays
6. Differential and Allowances
7. Social Security and Federal Income Tax
8. Advance of Dollar Funds
9. Insurance
10. Travel and Transportation Expenses
11. Preference for U.S.-Flag Air Carriers (FAR 52.247-63)
12. Payment
13. Conversion of U.S. Dollars To Local Currency
14. Post of Assignment Privileges
15. Security Requirements
16. Contractor-Mission Relationships
17. Termination (FAR 52.249-2)
18. Disputes (FAR 52.233-1 Alternate I)
19. Release of Information
20. Officials Not to Benefit
21. Convenant Against Contingent Fees
22. Notices
23. Reports
24. Use of Pouch Facilities
25. Biographical Data
26. Resident Hire PSC

For a tour of duty of 1 year or more, "Additional General Provisions (AGP)" will be attached and be applicable to this contract. References to individual clauses should specify for example, "GP 9" (insurance), or "AGP 34" (termination).

SCHEDULE

NOTE: Use of the following Schedule articles are not mandatory. They are intended to serve as guidelines for contracting offices in drafting contract schedules. Article language may be changed to suit the needs of the particular contract.

Article I—Statement of Duties

(The statement of duties shall include:

A. General statement of the purpose of the contract.

B. Statement of duties to be performed.

C. Any AID Consultation or orientation.)

Article II—Period of Service Overseas

Within —— days after written notice from the Contracting Officer that all clearances, including the doctor's certificate required under General Provisions Clause 3, have been received or unless another date is specified by the Contracting Officer in writing, the contractor shall proceed to —— where he/she shall promptly commence performance of the duties specified above. The contractor's period of service overseas shall be approximately —— in ——. (Specify time of duties in each location as well as authorized stopovers with purpose of each.)

Article III—Contractor's Compensation and Reimbursement in U.S. Dollars

A. Except to the extent reimbursement therefor is payable in the currency of the Cooperating Country pursuant to Article IV, AID shall pay the contractor compensation after it has accrued and reimburse him/her in U.S. dollars for necessary and reasonable costs actually incurred by him/

her in the performance of this contract within the categories listed in paragraph C, below, and subject to the conditions and limitations applicable thereto as set out herein and in the attached General Provisions (GP).

B. The amount budgeted and available as personal compensation to the contractor is calculated to cover a calendar period of approximately —— (days) (weeks) (months) (years) (which is to include (1) vacation, sick, and home leave which may be earned during the contractor's tour of duty (GP Clause No. 5, AGP Clause No. 29), (2) —— days for authorized travel (GP Clause 10(b)), and (3) —— days for orientation and consultation in the United States.

C. Allowable Costs:

1. Compensation at the rate of $—— per (year) (month) (week) (day). Adjustments in compensation (pay) for periods when the contractor is not in compensable pay status shall be calculated as follows: Rate of $—— per (day) (hour).

Contingency for Compensation (Pay Comparability) Adjustments. $——.

2. Overtime (Unless specifically authorized in the Schedule of this contract, no overtime hours shall be allowed hereunder.) $——

*3. Overseas Differential (Ref. GP Clause No. 6.) Rate —— and Contingency $—— $——

**4. Allowances in Cooperating Country (Ref. GP Clause 6 and AGP Clause 30.) $——

**5. Travel and Transportation (Ref. GP Clause 10 and AGP Clause 31.) (Includes the value of GTRs furnished by the Government, not payable to Contractor). $——

a. United States $——
b. International $——
c. Cooperating and Third Country $——
Subtotal Item 5 $——

**6. Subsistence or Per Diem (Ref. GP Clause 10 and AGP Clause 31.)

a. United States $——
b. International $——
c. Cooperating and Third Country $——
Subtotal Item 6 $——

7. Other Direct Costs.

a. Health and Life Insurance Ref. GP (Clause 9-b.) $——
b. Precontract Costs, passport, visa, inoculations, etc. (Ref. GP Clause 8.) $——
c. Physical Examination (Ref. GP Clause 3 and AGP Clause 23.) $——
d. Communications, Miscellaneous. $——
Subtotal Item 7 $——

8. F.I.C.A.—U.S.C. contribution (not payable to contractor). $——

*If post differential is applicable to the assigned post, a contingency for the adjusted amount of differential resulting from compensation (pay comparability) adjustment should be included.

**Do not include the value of any costs to be paid or reimbursed in local currency.

Total estimated costs (lines 1 thru 8). $——

D. Maximum U.S.-Dollar Obligation:

In no event shall the maximum U.S.-dollar obligation under this contract, exceed $——. Contractor shall keep a close account of all obligations he/she incurs and accrues hereunder and promptly notify the Contracting Officer whenever in his/her opinion the said maximum is not sufficient to cover all compensation and costs reimbursable in U.S. dollars which he/she anticipates under the contract.

Article IV—Costs Reimbursable and Logistic Support

A. General:

The contractor shall be provided with or reimbursed in local currency (   ) for the following:

[Complete]

B. Method of Payment of Local Currency Costs:

Those contract costs which are specified as local currency costs in paragraph A above, if not furnished in kind by the cooperating government or the Mission, shall be paid to the contractor in a manner adapted to the local situation, based on vouchers submitted in accordance with General Provision Clause 12. The documentation for such costs shall be on such forms and in such manner as the Mission Director shall prescribe.

Article V—Precontract Expenses

No expense incurred before execution of this contract will be reimbursed unless such expense was incurred after receipt and acceptance of a precontract expense letter issued to the contractor by the Contracting Officer, and then only in accordance with the provisions and limitations contained in such letter. The rights and obligations created by such letter shall be considered as merged into this contract.

Article VI—Additional Clauses

(Additional Schedule clauses may be added such as the implementation of General Provisions or Additional General Provisions clauses.)

Section 11. General Provisions

Contract With a U.S. Citizen or a U.S. Resident Alien for Personal Services Abroad

The following clauses are to be used for tours of duty of less than 1 year. For tours of duty of 1 year or more these "General

Provisions" will be supplemented by the "Additional General Provisions", Section 12.

Index of Clauses

1. Definitions (DEC 1985)
2. Laws and Regulations Applicable Abroad (DEC 1985)
3. Physical Fitness (DEC 1985)
4. Workweek and Compensation (Pay Comparability Adjustments) (DEC 1985)
5. Leave and Holidays (DEC 1985)
6. Differential and Allowances (DEC 1985)
7. Social Security and Federal Income Tax (DEC 1985)
8. Advance of Dollar Funds (DEC 1985)
9. Insurance (DEC 1985)
10. Travel and Transportation Expenses (DEC 1985)
11. Preference for U.S.-Flag Air Carriers (APR 1984) (FAR 52.247-63)
12. Payment (DEC 1985)
13. Conversion of U.S. Dollars to Local Currency (DEC 1985)
14. Post of Assignment Privileges (DEC 1985)
15. Security Requirements (DEC 1985)
16. Contractor-Mission Relationships (DEC 1985)
17. Termination (APR 1984) (FAR 52.249-12)
18. Disputes (APR 1984) [(FAR 52.233-1) (Alternate I)]
19. Release of Information (DEC 1985)
20. Officials Not to Benefit [(APR 1984) (FAR 52.203-5)]
21. Covenant Against Contingent Fees [(DEC 1985) (FAR 52.203-5)]
22. Notices (DEC 1985)
23. Reports (DEC 1985)
24. Use of Pouch Facilities (DEC 1985)
25. Biographical Data
26. Resident Hire PSC

1. Definitions (Dec. 1985)

(a) "Administrator" shall mean the Administrator or the Deputy Administrator of AID.

(b) "AID" shall mean the Agency for International Development.

(c) "Contracting Officer" shall mean a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(d) "Contractor" shall mean the individual engaged to serve in the Cooperating Country under this Contract.

(e) "Cooperating Country" shall mean the foreign country in or for which services are to be rendered hereunder.

(f) "Cooperating Government" shall mean the government of the Cooperating Country.

(g) "Economy class" air travel (also known as jet-economy, air coach, tourist-class, etc.) shall mean a class of travel which is less than first class.

(h) "Government" shall mean the United States Government.

(i) "Local currency" shall mean the currency of the Cooperating Country.

(j) "Mission" shall mean the United States AID Mission to, or principal AID office in, the Cooperating Country.

(k) "Mission Director" shall mean the principal officer in the Mission in the Cooperating Country, or his/her designated representative.

(l) "Tour of duty" shall mean the Contractor's period of service under this Contract and shall include orientation in the United States (less language training), authorized leave, and international travel.

(m) "Traveler" shall mean the Contractor in authorized travel status.

(n) "Project Officer" shall mean the AID official to whom the Contractor reports, and who is responsible for monitoring the Contractor's performance.

(o) "U.S. Resident Alien", as used in this contract shall mean an alien immigrant, legally resident in the United States, the Commonwealth of Puerto Rico, or the possessions of the United States, and having a valid "Alien Registration and Receipt Card" (Immigration and Naturalization Service forms I-151 or I-551).

(p) "Resident Hire Personal Services Contractor (PSC)" means a U.S. citizen who, at the time they are hired as a PSC, resides in the cooperating country (a) as a spouse or dependent of a U.S. citizen employed by a U.S. Government Agency or under any U.S. Government-financed contract or agreement, or (b) for reasons other than for employment with a U.S. Government Agency or under any U.S. Government-financed contract or agreement. A U.S. citizen for purposes of this definition also includes persons who at the time of contracting, are lawfully admitted permanent residents of the United States.

2. Laws and Regulations Applicable Abroad (Dec. 1985)

(a) Conformity to Laws and Regulations of the Cooperating Country.

Contractor agrees that, while in the cooperating country, he/she shall abide by all applicable laws and regulations of the cooperating country and political subdivision thereof.

(b) Purchase or Sale of Personal Property or Automobiles.

To the extent permitted by the cooperating country, the purchase, sale, import, or export of personal property or automobiles in the cooperating country by the Contractor shall be subject to the same limitations and prohibitions which apply to Mission U.S.-citizen direct-hire employees.

(c) Code of Conduct.

The Contractor shall, during his/her tour of duty under this Contract, be considered an "employee" (or if his/her tour of duty is for less than 130 days, a "special Government employee") for the purposes of, and shall be subject to, the provisions of 22 CFR Part 10, "Employee Responsibilities and Conduct" (Attachment 2C to Chapter 2 of AID Handbook 24). The Contractor acknowledges receipt of a copy of said provisions by his/her acceptance of this Contract.

3. Physical Fitness (Dec. 1985)

The Contractor shall be required to be examined by a licensed doctor of medicine, and the Contractor shall obtain from the doctor a certificate that, in the doctor's opinion, the Contractor is physically qualified to engage in the type of activity for which he/she is to be employed under the Contract and is physically qualified to reside in the cooperating in the cooperating country. A copy of the certificate shall be provided to the Contracting Officer prior to the Contractor's departure for the cooperating country, or if this Contract is entered into in the cooperating country, the Contractor shall provide the certificate before he/she starts work under the Contract. The Contractor shall be reimbursed not to exceed $100 for the cost of the physical examination, plus reimbursement of charges for immunizations if such costs are not covered by the Contractor's health insurance policy.

4. Workweek and Compensation (Pay Comparability Adjustments) (Dec. 1985)

(a) Workweek.

The Contractor's workweek shall not be less than 40 hours, unless otherwise provided in the Contract Schedule, and shall coincide with the workweek for those employees of the Mission or the cooperating country agency most closely associated with the work of this Contract. If the Contract is for less than full time (40 hours weekly), the annual and sick leave earned shall be prorated (see the General Provision of this Contract entitled Leave and Holidays).

(b) Compensation (Pay Comparability) Adjustments.

The Contractor's compensation shall be adjusted to reflect the pay comparability adjustments which are granted from time to time to U.S. direct-hire employees by Executive Order for the statutory pay systems. Any adjustments authorized shall not exceed that percentage stated in the Executive Order granting the adjustment. Further, the adjusted compensation may not exceed the maximum FS-1 annual compensation (or the equivalent daily rate).

5. Leave and Holidays (Dec. 1985)

(a) Vacation Leave.

(1) The Contractor shall earn vacation leave at the rate of 13 workdays per annum or 4 hours every 2 weeks. However, no vacation shall be earned if the tour of duty is less than 90 days.

(2) Notwithstanding paragraph (a)(1) of this provision, if the Contractor has had previous PSC service (i.e., has served under other personal services contracts (PSCs) covered by Sec. 636(a)(3) of the FAA), the Contractor shall earn vacation leave at the rate of either 6 hours every two weeks for cumulative PSC service exceeding 3 years or 8 hours every two weeks for cumulative PSC service exceeding 15 years. Former Civil Service, Foreign Service, or a Military Service experience is not creditable towards PSC service for annual leave purposes.

(3) It is understood that vacation leave is provided under this Contract primarily for the purposes of affording necessary rest and recreation during the tour of duty in the cooperating country. The Contractor in consultation with the AID Mission shall develop a vacation leave schedule early in his/her tour of duty taking into consideration project requirements, employee preference and other factors. All vacation leave earned by the Contractor must be used during the his/her tour of duty. All vacation leave earned by the Contractor but not taken by the end of the his/her tour of duty will be forfeited unless otherwise approved in writing by the Contracting Officer or Mission Director.

(b) Sick Leave.

Sick leave is earned at a rate not to exceed 13 work-days per annum or 4 hours every 2 weeks. Unused sick leave may be carried over under an extension of this Contract but the Contractor will not be compensated for unused sick leave at the completion of this Contract.

(c) Leave Without Pay.

Leave without pay may be granted only with the written approval of the Contracting Officer or Mission Director.

(d) Holidays.

The Contractor, while serving abroad shall be entitled to all holidays granted by the Mission to U.S.-citizen direct-hire employees.

(e) Leave Records.

The Contractor shall maintain current leave records for himself/herself and make them available, as requested by the Mission Director or the Contracting Officer.

6. Differential and Allowances (Dec. 1985)

(a) The following differential and allowances will be granted to the Contractor to the same extent and on the same basis as they are granted to U.S.-citizen direct-hire employees at the Mission by the Standardized Regulations (Government Civilians, Foreign Areas), as from time to time amended, except as noted to the contrary below:

Applicable Reference to Standardized Regulations

(1) Post Differential—Chapter 500 and Tables in Chapter 900
(2) Living Quarters Allowance—Section 130
(3) Temporary Lodging Allowance—Section 120
(4) Post Allowance—Section 220
(5) Supplemental Post Allowance—Section 230
(6) Payments During Evacuation—Section 600

(i) Post differential.

Post differential is an additional compensation for service at places in foreign areas where conditions of environment differ substantially from conditions of environment in the continental United States and warrant additional compensation as a recruitment and retention incentive. In areas where post differential is paid to AID direct-hire employees, post differential not to exceed the percentage of salary as is provided such AID employees in accordance with the Standardized Regulations (Government Civilians, Foreign Areas) Chapter 500 (except the limitation contained in Section 552, "Ceiling on Payment") Tables-Chapter 900, as from time to time amended, will be reimbursable hereunder for employees in respect to amounts earned during the time such employees actually spend overseas on work under this contract. When such post differential is provided to the Contractor, it shall be payable beginning on the date of arrival at the post of assignment and continue, including periods away from post on official business, until the close of business on the day of departure from post of assignment en route to the United States. Sick or vacation leave taken at or away from the post of assignment will not interrupt the continuity of the assignment or require a discontinuance of such post differential payments, provided such leave is not taken within the United States or the territories of the United States. Post differential will not be payable while the employee is away from his/her post of assignment for purposes of home leave. Short-term employees shall be entitled to post differential beginning with the forty-third (43rd) day at post.

(ii) Living quarters allowance.

Living quarters allowance is an allowance granted to reimburse an employee for substantially all of his/her cost for either temporary or residence quarters whenever Government-owned or Government-rented quarters are not provided to him/her at his/her post without charge. Such costs are those incurred for temporary lodging (temporary lodging allowance) or one unit of residence quarters (living quarters allowance) and include rent, plus any cost not included therein for heat, light, fuel, gas, electricity and water. The temporary lodging allowance and the living quarters allowance are never both payable to an employee for the same period of time. The Contractor will receive living quarters allowance for payment of rent and utilities if such facilities are not supplied. Such allowance shall not exceed the amount paid AID employees of equivalent rank in the Cooperating Country, in accordance with either the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 130, as from time to time amended, or other rates approved by the Mission Director. Subject to the written approval of the Mission Director, short-term employees may be paid per diem (in lieu of living quarters allowance) at rates prescribed by the Federal Travel Regulations, as from time to time amended, during the time such short-term employees spend at posts of duty in the Cooperating Country under this contract. In authorizing such per diem rates, the Mission Director shall consider the particular circumstances involved with respect to each such short-term employee including the extent to which meals and/or lodging may be made available without charge or at nominal cost by an agency of the United States Government or of the Cooperating Government, and similar factors.

(iii) Temporary lodging allowance.

Temporary lodging allowance is a quarters allowance granted to an employee for the reasonable cost of temporary quarters incurred by the employee and his/her family for a period not in excess of: (i) Three months after first arrival at a new post in a foreign area or a period ending with the occupation of residence (permanent) quarters, if earlier, and (ii) one (1) month immediately preceding final departure from the post subsequent to the necessary vacating of residence quarters. The Contractor will receive temporary lodging allowance for himself/herself and authorized dependents, in lieu of living quarters allowance, not to exceed the amount set forth in the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 120, as from time to time amended.

(iv) Post allowance.

Post allowance is a cost-of-living allowance granted to an employee officially stationed at a post where the cost of living, exclusive of quarters cost, is substantially higher than in Washington, DC. The Contractor will receive post allowance payments not to exceed those paid AID employees in the Cooperating Country, in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 220, as from time to time amended.

(v) Supplemental post allowance.

Supplemental post allowance is a form of post allowance granted to an employee at his/her post when it is determined that assistance is necessary to defray extraordinary subsistence costs. The Contractor will receive supplemental post allowance payments not to exceed the amount set forth in the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 230, as from time to time amended.

(vi) Payments during evacuation.

The Standardized Regulations (Government Civilians, Foreign Areas) provide the authority for efficient, orderly, and equitable procedure for the payment of compensation, post differential and allowances in the event of an emergency evacuation of employees or their dependents, or both, from duty stations for military or other reasons or because of imminent danger to their lives. If evacuation has been authorized by the Mission Director, the Contractor will receive payments during evacuation for himself/herself and authorized dependents evacuated from their post of assignment in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 600, and the Federal Travel Regulations, as from time to time amended.

The allowances provided in paragraphs (a)(1) through (a)(6) of this provision shall be paid to the Contractor in dollars or in the currency of the cooperating country in accordance with the practice prevailing at the Mission, or the Mission Director may direct that the Contractor be paid a per diem in lieu thereof as prescribed by the Standardized Regulations (Government Civilians, Foreign Areas), as from time to time amended.

(b) The Contractor shall not be eligible for any allowance, differential, or other employment benefit that is not expressly authorized by AIDAR Appendix D.

7. Social Security and Federal Income Tax (Dec. 1985)

(a) Since the Contractor is an employee, F.I.C.A. contributions and U.S. Federal Income Tax withholding shall be deducted in accordance with regulations and rulings of the Social Security Administration and the U.S. Internal Revenue Service, respectively.

(b) As an employee, the Contractor is not eligible for the "foreign earned income" exclusion under the IRS regulations (see 26 CFR 1.911-3(c)(3)).

8. Advance of Dollar Funds (Dec. 1985)

If requested by the Contractor and authorized in writing by the Contracting Officer, AID will arrange for an advance of funds to defray the initial cost of travel, travel allowances, authorized precontract expenses, and shipment of personal property. The advance shall be granted on the same basis as to an AID U.S.-citizen direct-hire employee in accordance with AID Handbook 22, Chapter 4.

9. Insurance (Dec. 1985)

(a) Worker's Compensation Benefits.

The Contractor shall be provided worker's compensation benefits in accordance with the Federal Employees Compensation Act.

(b) Health and Life Insurance.

(1) The Contractor shall be provided a maximum contribution of up to 50% against the actual costs of the Contractor's annual health insurance costs, provided that such costs may not exceed the maximum U.S. Government contribution for direct-hire personnel as announced annually by the Office of Personnel Management.

(2) The Contractor shall be provided a contribution of up to 50% against the actual costs of annual life insurance not to exceed $500.00 per year.

(3) A Contractor who is a spouse of a current or retired Civil Service, Foreign Service, or Military Service member and who is covered by their spouse's Government health or life insurance policy is ineligible for the contribution under paragraphs (a)(1) or (a)(2) of this provision. Proof of insurance coverage shall be submitted to the Contracting Officer before any contribution is paid.

(c) Insurance on Private Automobiles.

If the Contractor or his/her dependents transport, or cause to be transported, privately owned automobile(s) to the cooperating country, or any of them purchase an automobile within the cooperating country, the Contractor agrees to ensure that all such automobile(s) during such ownership within the cooperating country will be covered by a paid-up insurance policy issued by a reliable company providing the following minimum coverages, or such other minimum coverages as may be set by the Mission Director, payable in U.S. dollars or its equivalent in the currency of the cooperating country: injury to persons, $10,000/$20,000; property damage, $5,000. The Contractor further agrees to deliver, or cause to be delivered to the Mission Director, the insurance policies required by this clause or satisfactory proof of the existence thereof, before such automobile(s) is operated within the cooperating country. The premium costs for such insurance shall not be a reimbursable cost under this Contract.

(d) Claims for Private Personal Property Losses.

The Contractor shall be reimbursed for private personal property losses in accordance with AID Handbook 23, Chapter 10.

10. Travel and Transportation Expenses (Dec. 1985)

(a) General.

AID/Washington Office of Management Operations, or such other office as may be designated by that office, may furnish Transportation Requests (TR's) to the Contractor for transportation originating in the United States authorized by this Contract, and the executive or administrative officer at the Mission may furnish TR's for such authorized transportation which is payable in local currency or is to originate overseas. When transportation is not provided by the Government-issued TR, the Contractor shall procure his/her own transportation, the costs of which will be reimbursed in accordance with the following.

(b) Travel and Transportation.

(1) U.S. Travel and Transportation.

The Contractor shall be reimbursed for actual transportation costs and travel allowances in the United States as authorized in the Contract Schedule or approved in advance by the Contracting Officer or the Mission Director. Transportation costs and travel allowances shall not be reimbursed in any amount greater than the cost of, and time required for, economy-class commercially scheduled air travel by the most expeditious route except as otherwise provided in paragraph (b)(2)(vi) of this provision unless economy air travel is not available and the Contractor certifies to this in his/her voucher or other documents submitted for reimbursement.

(2) International Travel.

(i) The Contractor shall be reimbursed for actual transportation costs and travel allowances from place of residence in the United States (or other location, provided that the cost of such travel does not exceed the cost of travel from the place of residence) to post of duty in the cooperating country and return to place of residence in the United States (or other location, provided that the cost of such travel does not exceed the cost of travel from the post of duty to the place of residence) upon completion of his/her duties. Such transportation costs shall not be reimbursed in an amount greater than economy-class commercially scheduled air travel by the most expeditious route, except as otherwise provided in paragraph (b)(2)(vi) of this provision, unless economy air travel or economy air space are not available and the Contractor certifies to the facts in the voucher or other document he/she submits for reimbursement. When travel to or from the cooperating country is by economy-class accommodations, the Contractor will be reimbursed for the cost of transporting up to 44 pounds gross weight of accompanied personal baggage in addition to that regularly allowed with the economy ticket, provided that the total number of pounds of baggage does not exceed that regularly allowed for first-class travelers. Travel allowances shall be at the rate of $6 per day for not more than the travel time required by scheduled economy-class commercial air carrier using the most expeditious route and computed in accordance with the Federal Travel Regulations, as from time to time amended. One stopover en route for a period not to exceed 24 hours is allowable when the Contractor uses economy-class accommodations for a trip of 14 hours or more of scheduled duration. Such stopover shall not be authorized when travel is by indirect route for the convenience of the Contractor. Per diem during authorized stopover shall be paid in accordance with the Federal Travel Regulations, as from time to time amended.

(ii) Unaccompanied Baggage.

Except as provided in the Contract Schedule or approved by the Contracting Officer, the Contractor who is on a tour of duty of 90 days or more under this Contract shall be reimbursed for the cost of unaccompanied personal effects not to exceed 250 pounds gross weight via airfreight from place of residence in the United States (or other location, provided that the cost of such shipment does not exceed the cost of shipment from the place of residence) to post of duty in the cooperating country and return to place of residence in the United States (or other location, provided that the cost of such shipment does not exceed the cost of shipment from the post of duty to the place of residence) upon completion of duties.

(iii) Local Travel.

The Contractor shall be reimbursed at the rates established by the Mission Director for authorized travel in the cooperating country in connection with duties directly referable to work under this Contract. In the absence of such established rates, the Contractor shall be reimbursed for actual costs of authorized travel in the cooperating country if not provided by the cooperating government or the Mission in connection with duties directly referable to work hereunder, including travel allowances at rates precribed by the Standardized Regulations (Government Civilians, Foreign Areas), as from time to time amended.

(iv) Special International Travel and Third-Country Travel.

For special travel which (A) advances the purpose of the Contract, (B) is not otherwise provided by the cooperating government; and (C) has the prior written approval of the Contracting Officer or the Mission

Director, the Contractor shall be reimbursed for (*1*) the cost of international transportation other than between the United States and the cooperating country and for local transportation within other countries, and (*2*) travel allowances while in official travel status and while performing services under the Contract in such other countries at rates prescribed by the Standardized Regulations (Government Civilians, Foreign Areas), as from time to time amended.

(v) Indirect Travel for Personal Convenience.

(A) When travel is performed by an indirect route for the personal convenience of the traveler, the allowable costs of such travel will be computed on the basis of the cost of economy class air fare via the direct usually traveled route between the authorized points of departure and destination.

(B) If such costs include fares for air or ocean transportation by foreign-flag carriers, approval for indirect travel by such foreign-flag carrier must be obtained from the Contracting Officer or Mission Director, *before* such travel is undertaken, otherwise only that portion of travel accomplished by U.S.-flag carriers will be reimbursable under this contract.

(vi) Delays En Route.

The Contractor may be granted reasonable delays en route, provided that such delays are caused by events beyond the control of the Contractor and are not due to circuitous routing. It is understood that if the delay is caused by physical incapacitation, the Contractor shall be eligible for such sick leave as is provided under paragraph (b) of the General Provision of this Contract entitled Leave and Holidays.

(vii) Privately Owned Automobiles (POV).

(A) If travel by POV is authorized in the Contract Schedule or approved by the Contracting Officer, the Contractor shall be reinbursed for the cost of travel in his/her privately owned automobile at the rate per mile equal to the rate authorized a U.S. Government employee in equivalent circumstances, plus authorized per diem, if the automobile is being driven in connection with: (1) Authorized orientation, (2) authorized duties under this Contract, or (3) en route to or from the cooperating country provided that the total cost of the mileage and the per diem to the Contractor shall not exceed the total constructive cost of fare and normal per diem by (i) surface common carrier or (ii) economy class air, whichever is the lesser.

(B) Cost of the shipment of automobiles for Contract tours of duty of less than 1 year is not reimbursable under this Contract.

(viii) Emergency and Irregular Travel and Transportation.

Actual transportation costs and travel allowances while en route, as provided in this section, shall be reimbursed under the following conditions:

(A) Subject to the prior written approval of the Mission Director, the costs of going from post of duty in the cooperating country to the United States or other approved location for the Contractor when, because of reasons or conditions beyond his/her control, the Contractor has not completed his/her required service in the cooperating country. The Mission Director may also authorize the return to the cooperating country of such Contractor.

(B) It is agreed that paragraph (b)(2)(viii)(A) of this provision includes, but is not necessarily limited to, the following:

(*1*) Need for medical care beyond that available within the areas to which the Contractor is assigned, or serious effect on physical or metal health if residence is continued at assigned post of duty, subject in either case, to the limitations stated in the provision of this contract entitled "Physical Fitness." The Mission Director may authorize a medical attendant to accompany the employee at contract expense if, based on medical opinion, such an attendant is necessary.

(*2*) Serious illness, injury, or death of a member of the Contractor's immediate family. Travel shall be authorized in accordance with emergency visitation travel granted to U.S.-citizen direct-hire employees.

(*3*) Emergency evacuation when ordered by the principal U.S. Diplomatic Officer in the cooperating country. Allowances at safe haven when authorized by the Mission Director, shall be payable in accordance with established Government Regulations.

(*4*) Preparation and return of the remains of a deceased Contractor.

11. Preference for U.S.-Flag Air Carriers (Apr. 1984) (FAR 52.247-63)

(a) "International air transportation," as used in this clause, means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States," as used in this clause, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

"U.S.-flag air carrier," as used in this clause, means an air carrier holding a certificate under Section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371).

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517)(Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) The Contractor agrees, in performing work under this contract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.

(d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a certification on vouchers involving such transportation essentially as follows:

Certification of Unavailability of U.S.-Flag Air Carriers

I hereby certify that international air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation) (State reasons—see Note):

(End of certification)

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

NOTE: Availability and unavailability of U.S.-flag air carrier service. (FAR 47.403-1)

(a) If a U.S.-flag air carrier cannot provide the international air transportation needed or if the use of U.S.-flag air carrier service would not accomplish an agency's mission, foreign-flag air carrier service may be deemed necessary.

(b) U.S.-flag air carrier service is considered available even though:

(1) Comparable or a different kind of service can be provided at less cost by a foreign-flag air carrier;

(2) Foreign-flag air carrier service is preferred by, or is more convenient for, the agency or traveler; or

(3) Service by a foreign-flag air carrier can be paid for in excess foreign currency (unless U.S.-flag air carriers decline to accept excess or near excess foreign currencies for transportation payable only out of such monies).

(c) Except as provided in paragraph 47.403-1(a), U.S.-flag air carrier service shall be used for U.S. Government-financed commercial foreign air travel if service provided by U.S.-flag air carriers is available. In determining availability of a U.S.-flag air carrier, the following scheduling principles shall be followed unless their application would result in the last or first leg of travel to or from the United States being performed by a foreign-flag air carrier:

(1) U.S.-flag air carrier service available at point of origin shall be used to destination or, in the absence of direct or through service, to the farthest interchange point on a usually traveled route.

(2) When an origin or interchange point is not served by a U.S.-flag air carrier, foreign-flag air carrier service shall be used only to the nearest interchange point on a usually traveled route to connect with U.S.-flag air carrier service.

(3) When a U.S.-flag air carrier involuntarily reroutes the traveler via a foreign-flag air carrier, the foreign-flag air carrier may be used notwithstanding the availability of alternative U.S.-flag air carrier service.

(d) For travel between a gateway airport in the United States and a gateway airport abroad, passenger service by U.S.-flag air carrier shall not be considered available if:

(1) The gateway airport abroad is the traveler's origin or destination airport and the use of U.S.-flag air carrier service would extend the time in a travel status, including delay at origin and accelerated arrival at destination, by at least 24 hours more than travel by a foreign-flag air carrier; or

(2) The gateway airport abroad is an interchange point and the use of U.S.-flag air carrier service would require the traveler to wait 6 hours or more to make connections at that point, or if delayed departure from, or accelerated arrival at, the gateway airport in the United States would extend time in a travel status by at least 6 hours more than travel by a foreign-flag air carrier.

(e) For travel between two points outside the United States, the rules in paragraphs 47.403-1(a), (b), and (c) shall be applicable, but passenger service by a U.S.-flag air carrier shall not be considered to be reasonably available if:

(1) Travel by a foreign-flag air carrier would eliminate two or more aircraft changes en route;

(2) One of the two points abroad is the gateway airport en route to or from the United States and the use of a U.S.-flag air carrier would extend the time in a travel status by at least 6 hours more than travel by a foreign-flag air carrier, including accelerated arrival at the overseas destination or delayed departure from the overseas origin, as well as delay at the gateway airport or other interchange point abroad; or

(3) The travel is not part of the trip to or from the United States and use of a U.S.-

flag air carrier would extend the time in a travel status by a least 6 hours more than travel by a foreign-flag air carrier including the delay at origin, delay en route, and accelerated arrival at destination.

(f) For all short-distance travel under either paragraph (d) or paragraph (e) of 47.403-1 U.S. air carrier service shall not be considered available when the elapsed traveltime on a scheduled flight from origin to destination airport by foreign-flag air carrier is 3 hours or less and service by a U.S.-flag air carrier would involve twice such traveltime.

12. Payment (Dec. 1985)

(a) Once each month (or at more frequent intervals, if approved by the paying office indicated on the Cover Page), the Contractor may submit to such office form SF 1034 Public Voucher for Purchases and Services Other Than Personal (original) and SF 1034-A (three copies), each voucher identified by the AID contract number properly executed in the amount of dollars claimed during the period covered. The voucher forms shall be supported by:

(1) The Contractor's detailed invoice, in original and two copies, indicating for each amount claimed the paragraph of the Contract under which payment is to be made, supported when applicable as follows:

(i) For compensation—a statement showing period covered, days worked, and days when Contractor was in authorized travel, leave, or stopover status for which compensation is claimed. All claims for compensation will be accompanied by, or will incorporate, a certification signed by the Project Officer covering days or hours worked, or authorized travel or leave time for which compensation is claimed.

(ii) For travel and transportation—a statement of itinerary with attached carrier's receipt and/or passenger's coupons, as appropriate.

(iii) For reimbursable expenses—an itemized statement supported by original receipts.

(2) The first voucher submitted shall include a fully executed Form W-4, Employees Withholding Exemption Certificate, to permit required withholding by AID, such as Federal Income Tax, F.I.C.A. deductions, and when applicable, state income tax. The first voucher shall also account for, and liquidate the unexpended balance of, any funds advanced to the Contractor.

(b) A final voucher shall be submitted by the Contractor promptly following completion of the duties under this Contract but in no event later than 120 days (or such longer period as the Contracting Officer may in his/her discretion approve in writing) from the date of such completion. The Contractor's claim, which includes his/her final settlement of compensation, shall not be paid until after the performance of the duties required under the terms of this Contract has been approved by AID. On receipt and approval of the voucher designated by the Contractor as the "final voucher" submitted on form SF 1034 (original) and SF 1034-A (three copies), together with a refund check for the balance remaining on hand of any funds which may have been advanced to the Contractor, the Government shall pay any amounts due and owing the Contractor.

Interest on Overdue Payments

(a) The Prompt Payment Act, Public Law 97-177 (96 Stat. 85.31; U.S.C. 1801) is applicable to payments under this contract and requires the payment to the contractor of interest on overdue payments and improperly taken discounts.

(b) Determinations of interest due will be made in accordance with the provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125.

Payment Due Dates

(a) Unless otherwise specifically provided in this contract, payments under this contract will be due as follows:

(1) When the designated paying office identified in the contract or purchase order is located in the U.S.: 30 calendar days after the date of actual receipt of a proper invoice in the designated paying office or 30 days after a designated AID official or authorized representative accepts the property or services, whichever is later.

(2) When the designated paying office identified in the contract or purchase order is at a foreign location: 45 calendar days after the date of actual receipt of a proper invoice in the designated paying office or 45 days after a designated AID official or authorized representative accepted the property or services, whichever is later.

13. Conversion of U.S. Dollars to Local Currency (Dec. 1985)

Upon arrival in the Cooperating Country, and form time to time as appropriate, the Contractor shall consult with the Mission Director or his/her authorized representative who shall provide, in writing, the policy the Contractor shall follow in the conversion of U.S. dollars to local currency.

This may include, but not be limited to the conversion of said currency through the cognizant U.S. Disbursing Officer, or Mission Controller, as appropriate.

14. Post of Assignment Privileges (Dec. 1986)

(a) Health room services of the same type that are normally provided to AID direct-hire U.S. citizen employees may be available only for U.S. citizen contractors and their authorized dependents (regardless of citizenship) at the post of duty. These services do not include hospitalization or predeparture or end of tour medical examinations. The services do include such medications as may be available, immunizations and preventive health measures, diagnostic examinations and advice, emergency treatment, and home visits as medically indicated.

(b) Privileges such as the use of APO, PX's, commissaries and officer's clubs are established at posts abroad under agreements between the U.S. and host governments. These facilities are intended for and usually limited to members of the official U.S. establishment including the Embassy, AID Mission, U.S. Information Service and the Military. Normally, the agreements do not permit these facilities to be made available to non-official Americans.

15. Security Requirements (Dec. 1985)

(a) This entire provision shall apply to the extent that this Contract involves access to classified information ("Confidential", "Secret", or "Top Secret") or access to administratively controlled information ("Limited Official Use"). Contractors that are not U.S. citizens shall not have access to classified or administratively controlled information.

(b) The Contractor: (1) Shall be responsible for safeguarding all classified or administratively controlled information in accordance with appropriate instructions furnished by AID Office of Security (IG/SEC), as referenced in paragraph (d) of this provision and shall not supply, disclose, or otherwise permit access to classified information or administratively controlled information to any unauthorized person; (2) shall not make or permit to be made any reproductions of classified information or administratively controlled information except with the prior written authorization of the Contracting Officer or Mission Director; (3) shall submit to the Contracting Officer, at such times as the Contracting Officer may direct, an accounting of all reproductions of classified or administratively controlled information; and (4) shall not incorporate in any other project any matter which will disclose classified and/or administratively controlled information except with the prior written authorization of the Contracting Officer.

(c) The Contractor shall not permit any alien access to classified or administratively controlled information. The Contractor shall not permit any individual to have access to classified information or administratively controlled information without the prior written authorization of the Contracting Officer or Mission Director.

(d) The Contractor shall follow the procedures for classifying, marking, handling, transmitting, disseminating, storing, and destroying official material in accordance with the regulations in the Foreign Affairs Manual, Chapter 5 (5 FAM 900), a copy of which will be furnished by the Contracting Officer or Mission Director.

(e) The Contractor agrees to submit immediately to the Mission Director or Contracting Officer a complete detailed report, appropriately classified, of any information which the Contractor may have concerning existing or threatened espionage, sabotage, or subversive activity.

(f) The Government agrees that, when necessary, it shall indicate by security classification or administratively controlled designation, the degree of importance to the national defense of information to be furnished by the Contractor to the Government or by the Government to the Contractor, and the Government shall give written notice of such security classification or administratively controlled designation to the Contractor and of any subsequent changes thereof. The Contractor is authorized to rely on any letter or other written instrument signed by the Contracting Officer changing a security classification or administratively controlled designation of information.

(g) The Contractor agrees to certify after completion of his/her assignment under this Contract that he/she has surrendered or disposed of all classified and/or administratively controlled information in his/her custody in accordance with applicable security instructions.

16. Contractor-Mission Relationships (Dec. 1985)

(a) The Contractor acknowledges that this Contract is an important part of the U.S. Foreign Assistance Program and agrees that his/her duties will be carried out in such a manner as to be fully commensurate with the responsibilities which this entails.

(b) While in the cooperating country, the Contractor is expected to show respect for the conventions, customs, and institutions of the cooperating country and not interfere in its political affairs.

(c) If the Contractor's conduct is not in accordance with paragraph (b) of this provision, the Contract may be terminated under General Provision 17 of this contract. The Contractor recognizes the right of the U.S. Ambassador to direct his/her immediate removal from any country when, in the discretion of the Ambassador, the interests of the United States so require.

(d) The Mission Director is the chief representative of AID in the cooperating country. In this capacity, he/she is responsible for the total AID Program in the cooperating country including certain administrative responsibilities set forth in this Contract and for advising AID regarding the performance of the work under the Contract and its effect on the U.S. Foreign Assistance Program. The Contractor will be responsible for performing his/her duties in accordance with the statement of duties called for by the Contract. However, he/she shall be under the general policy guidance of the Mission Director, and shall keep the Mission Director or his/her designated representative currently informed of the progress of the work under this Contract.

17. Termination (Apr. 1985) (FAR 52.249-12)

The Government may terminate this contract at any time upon at least 15 days' written notice by the Contracting Officer to the Contractor. The Contractor, with the written consent of the Contracting Officer, may terminate this contract upon at least 15 days' written notice to the Contracting Officer.

18. Disputes (Apr. 1984) (FAR 52.233-1 [Alternate I]

(a) This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to his/her contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding $50,000 is not a claim under the Act until certified as required by subparagraph (d)(2) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) For Contractor claims exceeding $50,000, the Contractor shall submit with the claim a certification that:

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and

(iii) The amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

(3)(i) If the Contractor is an individual, the certification shall be executed by that individual.

(ii) If the Contractor is not an individual, the certification shall be executed by:

(A) A senior company official in charge at the Contractor's plant or location involved; or

(B) An officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(e) For Contractor claims of $50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over $50,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) the Government shall pay interest on the amount found due and unpaid from: (1) The date the Contracting Officer receives the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(h) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the Contract, and comply with any decision of the Contracting Officer.

19. Release of Information (Dec. 1985)

All rights in data and reports shall become the property of the U.S. Government. All information gathered under this Contract by the Contractor and all reports and recommendations hereunder shall be treated as confidential by the Contractor and shall not, without prior written approval of the Contracting Officer, be made available to any person, party, or government, other than AID, except as otherwise expressly provided in this Contract.

20. Officials Not To Benefit (Apr. 1984)

No member of or delegate to the Congress or resident commissioner shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom.

21. Covenant Against Contingent Fees (Apr. 1984) (FAR 52.203-5)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

22. Notices (Dec. 1985)

Any notice, given by any of the parties hereunder, shall be sufficient only if in writing and delivered in person or sent by telegraph, telegram, registered, or regular mail as follows:

To AID: Administrator, Agency for International Development, Washington, DC 20523.

Attention: Contracting Officer (name of the cognizant Contracting Officer with a copy to the appropriate Mission Director).

To Contractor:

At his/her post of duty while in the cooperating country and at the Contractor's address shown on the Cover Page of this Contract or to such other address as either of such parties shall designate by notice given as herein required. Notices hereunder shall be effective in accordance with this clause or on the effective date of the notice, whichever is later.

23. Reports (June 1987)

(a) The contractor shall prepare and submit 2 copies of each report required by the schedule of this contract to the Bureau for Program and Policy Coordination, Center for Development Information and Evaluation, Development Information Division (PPC/CDIE/DI). All documents should be mailed to: PPC/CDIE/DI, ACQUISITIONS, Room 209, SA-18, Agency for International Development, Washington, DC 20523.

The title page of all reports forwarded to PPC/CDIE/DI pursuant to this paragraph shall include a descriptive title, the author's name(s), contract number, project number and title, contractor's name, name of the A.I.D. project office, and the publication or issuance date of the report.

(b) When preparing reports, the contractor shall refrain from using elaborate art work, multicolor printing and expensive paper/binding, unless it is specifically authorized in the Contract Schedule. Wherever possible, pages should be printed on both sides using single spaced type.

24. Use of Pouch Facilities (Aug. 1986)

(a) Use of diplomatic pouch is controlled by the Department of State. The Department of State has authorized the use of pouch facilities for AID Contractors as a general policy, as detailed in paragraph (a)(1) through (a)(6) of this provision. However, the final decision regrading use of pouch facilities rests with the Embassy or AID Mission. In consideration of the use of pouch facilities as hereinafter stated, the Contractor agrees to indemnify and hold harmless the Department of State and AID for loss or damage occurring in pouch transmission.

(1) Contractors are authorized use of the pouch for transmission and receipt of up to a maximum of 2 pounds per shipment of correspondence and documents needed in the administration of foreign assistance programs.

(2) U.S. citizen Contractors are authorized use of the pouch for personal mail up to a maximum of one pound per shipment (but see (a)(3) below). Non-U.S. citizen Contractors are not permitted use of the pouch for personal mail except to the extent that such use may be authorized by the Chief of Mission.

(3) Merchandise, parcels, magazines, or newspapers are not considered to be person-

al mail for purposes of this clause, and are not authorized to be sent or received by pouch.

(4) Official and personal mail under paragraphs (a)(1) and (2) of this provision, sent by pouch, should be addressed as follows:

Name of individual (followed by letter symbol "C")
Name of post (USAID/), Agency for International Development, Washington, DC 20523.

(5) Mail sent via the diplomatic pouch may not be in violation of U.S. Postal laws and may not contain material ineligible for pouch transmission.

(6) AID Contractors are not authorized use of military postal facilities (APO/FPO). This is an Adjutant General's decision based on existing laws and regulations governing military postal facilities and is being enforced worldwide. Posts having access to APO/FPO facilities and using such for diplomatic pouch dispatch may, however, accept official and personal mail for the pouch provided, of course, adequate postage is affixed when onward transmission (mail to other than AID/W) through U.S. postal channels is required.

(b) The Contractor shall be responsible for compliance with these guidelines and limitations on use of pouch facilities.

(c) Specific additional guidance on use of pouch facilities in accordance with this clause is available from the Post Communication Center at the Embassy or AID Mission.

25. Biographical Data

(a) The contractor agrees to furnish biographical information to the contracting officer, on forms (SF 171 and 171As) provided for that purpose.

(b) Emergency locator information. The contractor agrees to provide the following information to the Mission Administrative Officer on arrival in the host country regarding himself/herself and dependents:

(1) Contractor's full name, home address, and telephone number including any after-hours emergency number(s).

(2) The name and number of the contract, and whether the individual is the contractor or the contractor's dependent.

(3) The name, address, and home and office telephone number(s) of each individual's next of kin.

(4) Any special instructions pertaining to emergency situations such as power of attorney designees or alternate contact persons.

26. Resident Hire Personal Services Contractor

A contractor meeting the definition of a Resident Hire PSC contained in Section 11, General Provisions, Clause 1, Definitions, shall not be eligible for any fringe benefits (except contributions for FICA, health insurance and life insurance), allowances, or differentials, including but not limited to travel and transportation, medical, orientation, home leave, etc., unless such individual can demonstrate to the satisfaction of the contracting officer that he/she has received similar benefits/allowances from their immediately previous employer in the cooperating country, or the Mission Director determines that payment of such benefits would be consistent with the Mission's policy and practice and would be in the best interests of the U.S. Government.

Section 12. ADDITIONAL GENERAL PROVISIONS

Contract With a U.S. Citizen or a U.S. Alien Resident for Personal Services Abroad

The following clauses are to be used along with the General Provisions (Section 11) for a tour of duty of 1 year or more.

Table of Contents

26. Definitions (Long Tour) (Dec. 1985)
27. Laws and Regulations Applicable Abroad (Dependents) (Dec. 1985)
28. Physical Fitness (Long Tour) (Dec. 1985)
29. Leave and Holidays (Long Tour) (Dec. 1985)
30. Allowances (Long Tour) (Dec. 1985)
31. Travel and Transportation Expenses (Long Tour) (Dec. 1985)
32. Orientation and Language Training (Long Tour) (Dec. 1985)
33. Post of Assignment Privileges (Dependents) (Dec. 1985)
34. Termination (Long Tour) (Apr. 1985) (FAR 52.249-12)

26. Definitions (Long Tour) (Dec. 1985)

(a) "Dependents" means:

(1) Spouse.

(2) Children (including step and adopted children) who are unmarried and under 21 years of age, or regardless of age, are incapable of self-support.

(3) Parents (including step and legally adoptive parents) of the employee or of the spouse, when such parents are least 51 percent dependent on the Contractor for support.

(4) Sisters and brothers (including step or adoptive sisters or brothers) of the Contractor, or of the spouse, when such sisters and brothers are at least 51 percent dependent on the Contractor for support, unmarried and under 21 years of age, or regardless of age, are incapable of self-support.

(b) "Traveler" also means dependents of the Contractor who are in authorized travel status.

27. Laws and Regulations Applicable Abroad (Dependents) (Dec. 1985)

(a) Conformity to Laws and Regulations of the Cooperating Country.

While in the cooperating country, the Contractor agrees he/she will make every effort to assure that his/her authorized dependents shall abide by all applicable laws and regulations of the cooperating country and political subdivisions thereof.

(b) Purchase, Sale, Import, or Export of Personal Property or Automobiles.

To the extent permitted by the cooperating country, the purchase, sale, import, or export of personal property or automobiles by the Contractor's authorized dependents in the cooperating country shall also be subject to the same limitations and prohibitions which apply to U.S.-citizen direct-hire employee dependents.

28. Physical Fitness (Long Tour) (Dec. 1985)

(a) Predeparture.

The Contractor's authorized dependents shall also be required to be examined by a licensed doctor of medicine. The Contractor shall require the doctor to certify that, in the doctor's opinion, the Contractor's authorized dependents are physically qualified to reside in the cooperating country. A copy of the certificate shall be provided to the Contracting Officer prior to the dependent's departure for the cooperating country.

(b) End of Tour.

The Contractor and his/her authorized dependents are authorized physical examinations within 60 days after completion of the Contractor's tour of duty.

(c) Reimbursement.

The Contractor shall be reimbursed for the physical examinations mentioned in paragraphs (a) and (b) above as follows: (1) Not to exceed $100 per examination for the Contractor's dependents of 12 years of age and over and (2) $40 per examination for Contractor's dependents under 12 years of age. The Contractor shall also be reimbursed for the cost of immunizations.

29. Leave and Holidays (Long Tour) Dec. 1985)

(a) Vacation Leave.

(1) With the approval of the Mission Director, and if the circumstances warrant, a Contractor may be granted advance vacation leave in excess of that earned, but in no case shall a Contractor be granted advance vacation leave in excess of that which he/she will earn over the life of the Contract. The Contractor agrees to reimburse AID for leave used in excess of the amount earned during the Contractor's assignment under the Contract.

(2) Leave taken during the concluding weeks of an employee's tour shall be included in the established leave schedule and be limited to that amount of leave which can be earned during a twelve month period unless approved in accordance with paragraph (a)(3) of this clause.

(3) Vacation leave earned but not taken by the end of the employee's tour pursuant to paragraphs (a)(1) and (2) of this clause will be forfeited, unless the requirements of the project precluded the employee from taking such leave and the Contracting Officer, with the endorsement of the Mission, approves one of the following as a alternative:

(i) Taking, during the concluding weeks of the employee's tour, leave not permitted under (a)(2) of this clause, or

(ii) Lump-sum payment for leave not taken provided such leave does not exceed the number of days which can be earned by the employee during a twelve month period.

(b) Military Leave.

Military leave of not more than 15 calendar days in any calendar year may be granted to a Contractor who is a reservist of the Armed Forces, provided that such military leave has been approved in advance by the Contracting Officer or the Mission Director. A copy of any such approval shall be provided to the Contracting Officer.

(c) Home Leave.

(1) Home leave is leave earned for service abroad for use only in the United States, in the Commonwealth of Puerto Rico, or in the possessions of the United States.

(2) A Contractor who is a U.S. citizen or U.S. resident alien and has served at least 2 years overseas, as defined in paragraph (c)(4) below, under this Contract, and has not taken more than 30 workdays leave (vacation, sick, or leave without pay) in the United States, may be granted home leave of not more than 15 calendar days for each such year of service overseas; provided, that the Contractor agrees to return overseas upon completion of home leave under an additional 2 year appointment, or for such shorter period of not less than 1 year of overseas service under the Contract as the Mission Director may approve in advance. Home leave must be taken in the United States, the Commonwealth of Puerto Rico, or the possessions of the United States, and any days spent elsewhere will be charged to vacation leave or leave without pay.

(3) Notwithstanding the requirement in paragraph (c)(2) above, that the Contractor must have served 2 years overseas under this Contract to be eligible for home leave, the Contractor may be granted advance home leave subject to all of the following conditions:

(i) Granting of advance home leave would in each case serve to advance the attainment of the objectives of this Contract;

(ii) The Contractor shall have served a minimum of 18 months in the cooperating country on his/her current tour of duty under this Contract; and

(iii) The Contractor shall have agreed to return to the cooperating country to serve out the remainder of his/her current tour of duty and an additional 2 year appointment under this Contract, or such other additional appointment of not less than 1 year of overseas service as the Mission Director may approve.

(4) The period of service overseas required under paragraph (c)(2), or paragraph (c)(3) above, shall include the actual days in orientation in the United States (less language training) and the actual days overseas beginning on the date of departure from the U.S. port of embarkation on international travel and continuing, inclusive of authorized delays en route, to the date of arrival at the U.S. port of debarkation from international travel. Allowable vacation and sick leave taken while overseas, but not leave without pay, shall be included in the required period of service overseas. An amount equal to the number of days of vacation and sick leave taken in the United States, the Commonwealth of Puerto Rico, or the possessions of the United States will be added to the required period of service overseas.

(5) Salary during travel to and from the United States for home leave will be limited to the time required for travel by the most expeditious air route. The Contractor will be responsible for reimbursing AID for payments made during home leave if, in spite of the undertaking of the new appointment, the Contractor, except for reasons beyond his/her control as determined by the Contracting Officer, does not return overseas and complete the additional required service. Unused home leave is not reimbursable under this Contract.

(6) To the extent deemed necessary by the Contracting Officer, a Contractor in the United States on home leave may be authorized to spend not more than 5 days in work status for consultation at AID/Washington before returning to post of duty. Consultation at locations other than AID/Washington as well as any time in excess of 5 days spent for consultation, must be approved by the Mission Director or the Contracting Officer.

30. Differential and Allowances (Long Tour) (Dec. 1985)

The following allowances shall also be granted to the Contractor and his/her authorized dependents to the same extent, and on the same basis as, they are granted to AID employees and their dependents by the Standardized Regulations (Government Civilians, Foreign Areas) as from time to time amended:

	Applicable reference to standardized regulations (chapter)
Educational Allowance	270
Educational Travel	28
Separate Maintenance Allowances	26
Danger Pay Allowance	65

(a) Educational Allowance. Educational allowance is an allowance to assist the Contractor in meeting the extraordinary and necessary expenses, not otherwise compensated for, incurred by reason of his/her service in a foreign area in providing adequate elementary and secondary education for his/her children. The Contractor will receive educational allowances payments for his/her dependent children in amounts not to exceed those set forth in (Standardized Regulations Government Civilians, Foreign Areas), Chapter 270, as from time to time amended.

(b) Educational travel. Educational travel is travel to and from a school in the United States for secondary education (in lieu of an educational allowance) and for college education. The Contractor will receive educational travel payments for his/her dependent children provided such payment does not exceed that which would be payable in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 280, as from time to time amended. Educational travel shall not be authorized for Contractors whose assignment is less than two years.

(c) Separate maintenance allowance. Separate maintenance allowance is an allowance to assist an employee who is compelled by reason of dangerous, notably unhealthful, or excessively adverse living conditions at his/her post of assignment in a foreign area, or for the convenience of the Government, to meet the additional expense of maintaining his/her dependents elsewhere than at such post. The Contractor will receive separate maintenance allowance payments not to exceed that made to AID employees in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 260, as from time to time amended.

(d) Danger pay allowance. Danger pay allowance is an allowance to provide additional compensation above basic compensation to employees in foreign areas where there exist conditions of civil insurrection, civil war, terrorism or wartime conditions which threaten physical harm or imminent danger to the health or well-being of an employee. The danger pay allowance is in lieu of that part of the hardship post differential rate at a post which is attributable to political violence. Consequently, the rate of post differential may be reduced while danger pay is in effect to avoid dual crediting for political violence. The contractor shall be allowed danger pay allowance not to exceed that paid AID employees in the cooperating country, in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 650, as from time to time amended.

The allowances provided in paragraph (a) through (d) above shall be paid to the Contractor in dollars or in the currency of the cooperating country in accordance with the practice prevailing at the Mission.

31. Travel and Transportation Expenses (Long Tour) (Dec. 1985)

(a) General.

Pursuant to paragraph (a) of Clause 10 of the General Provisions, when transportation is not provided by Government-issued TR for the items listed below, the Contractor shall procure his/her own transportation, the costs of which will be reimbursed in accordance with the following:

(1) International Travel.

(i) International travel costs and allowances and stopovers for authorized dependents shall be reimbursed on the same basis as for the Contractor under General Provision Clause No. 10(b)(2)(i) of this Contract except that travel allowances for such dependents shall be at the rate of $6 per day for persons 11 years of age or over and $3 per day for persons under 11 years of age payable for not more than the travel time required by scheduled economy class commercial air carrier using the most expeditious route and computed in accordance with the Federal Travel Regulations, as from time to time amended.

(ii) 1. All international ocean transportation of things which is to be reimbursed in U.S. dollars as authorized under this Contract shall be by U.S.-flag vessels to the extent they are available. When U.S.-flag vessels are not available, or their use would result in a significant delay, the Contractor may request a release from this requirement from M/SER/AAM, Transportation Division, Agency for International Development, Washington, DC 20523, giving the basis for the request.

2. All international air transportation of dependents shall be in accordance with General Provision 11, entitled "Preference for U.S. Flag Air Carriers.".

(b) Limitation on Travel Dependents.

Travel costs and allowances will be allowed for authorized dependents of the Contractor and such costs shall be reimbursed for travel from place of abode in the United States to assigned station in the cooperating country and return, only if the dependent remains in the cooperating country for at least 9 months or one-half of the required tour of duty of the Contractor, whichever is greater, except as otherwise authorized hereunder for education, medical, or emergency visitation travel.

(c) Delays En Route.

Dependents may be granted reasonable delays en route, not circuitous in nature, while in travel status, caused by events beyond the control of such dependents.

(d) Travel by Privately Owned Automobile (POV).

Notwithstanding paragraph (b)(2)(vii) of Clause 10 of the General Provisions, if travel by POV is authorized in the Schedule or approved by the Contracting Officer, the Contractor shall be reimbursed for the cost of travel in his/her privately owned automobile at the rate per mile equal to the rate authorized a U.S. Government employee in equivalent circumstances, plus authorized per diem for the Contractor and for each of the authorized dependents traveling in the automobile if the automobile is being driven in connection with (1) authorized orientation, (2) authorized duties under this Contract, or (3) en route to or from the cooperating country as authorized in the Schedule; provided that the total cost of the mileage and the per diem paid to all authorized travelers shall not exceed the total constructive cost of fare and normal per diem for all authorized travelers by (i) surface common carrier or (ii) less-than-first-class air, whichever is less.

(e) Emergency and Irregular Travel and Transportation.

Notwithstanding the provisions of paragraph (b)(2)(viii) of Clause 10 of the General Provisions, actual transportation costs and travel allowances while en route, as provided in this section, will also be reimbursed under the following conditions:

(1) Subject to the prior written approval of the Mission Director, the costs of going from post of duty in the cooperating country to the United States or other approved location for the Contractor and authorized dependents when, because of reasons or conditions beyond his/her control, the Contractor has not completed his/her required service in the cooperating country or the dependent must leave the cooperating country. The Mission Director may also authorize the return to the cooperating country of such Contractor and/or his/her authorized dependents.

(2) It is agreed that paragraph (e)(1) above, includes but is not necessarily limited to the following:

(i) Need for medical care beyond that available within the area to which Contractor is assigned.

(ii) Serious effect on physical or mental health if residence is continued at assigned post of duty.

(iii) Serious illness, injury, or death of a member of a Contractor's immediate family or a dependent. Travel may be authorized in accordance with emergency visitation travel granted to U.S.-citizen direct-hire employees and their dependents under Chapter 699 of the Standardized Regulations (Government Civilians, Foreign Areas).

(iv) Emergency evacuation when ordered by the principal U.S. Diplomatic Officer in the cooperating country. Transportation and travel allowances at safe haven and the transportation of household effects and automobile or storage thereof when authorized by the Mission Director, shall be payable in accordance with established Government regulations.

(v) Preparation and return of the remains of a deceased Contractor or his/her dependents.

(f) Transportation of Motor Vehicles, Personal Effects, and Household Goods.

(1) General.

Transportation, including packing and crating costs, will be paid for shipment from Contractor's residence in the United States or other location (provided that the cost of transportation does not exceed the cost from the Contractor's residence) to post of duty in the cooperating country and return to the Contractor's residence in the United States or other location (provided that the cost of transportation does not exceed the cost to the Contractor's residence), (i) of one privately owned motor vehicle for the Contractor subject to the restrictions contained in paragraph (h) below, (ii) of personal effects of the Contractor, and (iii) of household goods of Contractor not to exceed the following limitations:

	Basic household furniture not supplied (pounds net weight)	Basic household furniture supplied (pounds net weight)
Contractor with dependents in cooperating country	18,000	7,200
Contractor without dependents in cooperating country	18,000	7,200

NOTE: For the purpose of this Clause, "net weight" and "gross weight" are defined and determined in accordance with the provisions of Section 162.1 of the Uniform Foreign Affairs Regulations, (for State/AID/USIA Commerce, and Agriculture).

The cost of transporting motor vehicles and household goods shall not exceed the cost of packing, crating, and transportation by surface common carrier. In the event that the carrier does not require boxing or crating of motor vehicles for shipment to the cooperating country, the cost of boxing or crating is not reimbursable. The transportation of a privately owned motor vehicle for a Contractor may be authorized as a replacement of the last such motor vehicle shipped under this Contract for such Contractor when the Mission Director determines, in advance, and so notifies the Contractor in writing, that the replacement is necessary for reasons not due to the negligence or malfeasance of the Contractor. The determination shall be made under the same rules and regulations that apply to authorized Mission U.S.-citizen direct-hire employees.

(2) Unaccompanied Baggage.

The Contractor will be reimbursed for costs of shipment of unaccompanied baggage (in addition to the weight allowance above for household effects) not to exceed the following:

	Gross weight (pounds)
Employee	250
First dependent traveling	200
Second dependent traveling	150
Each additional dependent traveling	100

This unaccompanied baggage may be shipped as air freight by the most direct route between authorized points of origin and destination regardless of the modes of travel used.

Unaccompanied baggage is considered to be those personal belongings needed by the traveler immediately upon arrival at destination.

(3) Reduced Rates on U.S.-Flag Carriers.

Reduced rates on U.S.-flag carriers are in effect for shipments of household goods and personal effects of AID Contractors between certain locations. These reduced rates are available provided the shipper furnishes to the carrier at the time of the issuance of the Bill of Lading documentary evidence that the shipment is for the account of AID. The Contracting Officer will, on request, furnish to the Contractor current information concerning the availability of a reduced rate with respect to any proposed shipment. The Contractor will not be reimbursed for shipments of household goods or personal effects in amounts in excess of the reduced rates which are available in accordance with the foregoing.

(g) Storage of Household Effects.

(1) The cost of storage charges (including packing, crating, and drayage costs) in the United States of household goods of the Contractor will be reimbursed, in lieu of transportation of all or any part of such goods to the cooperating country under paragraph (f) above, provided that (1) the total amount of household goods shipped to the cooperating country and stored in the

United States shall not exceed 18,000 pounds net for each Contractor employee regardless of family status, and (2) at least 200 pounds net of household effects will be stored; quantities of less than 200 pounds net stored will not be reimbursed.

(2) Storage of items of high value (items that exceed $1,000 in value, that are irreplaceable or one of a kind, and that have a definite monetary or insurable value), such as clothing, rugs, tapestries, paintings, other works of art and that have special storage requirements, is also reimbursable. If requested by the Contractor and approved by the Contracting Officer, after receipt (from the Contractor), of an itemized inventory of the items to be stored, the request for reimbursement shall be processed on the same basis as for AID U.S. citizen direct-hire employees in accordance with Handbook 22, Appendix 9A.

(h) Transportation of Foreign-Made Motor Vehicles.

Reimbursement of the costs of transporting a foreign (non-U.S.) made motor vehicle will be made in accordance with the provisions of the Uniform State/AID/USIA Foreign Service Travel Regulations, as from time to time amended, on the same basis as a U.S. Government employee.

(i) Home Leave Travel.

The Contractor shall be reimbursed for the cost of travel performed by Contractor and dependents for purposes of home leave, provided that such reimbursement does not exceed that authorized by the Uniform State/AID/USIA Foreign Service Travel Regulations.

(j) Rest and Recuperation Travel.

If approved in writing by the Mission Director, the Contractor and his/her dependents shall be allowed rest and recuperation travel on the same basis as authorized U.S.-citizen direct-hire Mission employees and their dependents.

32. Orientation and Language Training (Long Tour) (Dec. 1985)

(a) Except as set forth in paragraph (b) (4) below, the Contractor shall receive a maximum of 2 weeks AID orientation before travel overseas. The dates of orientation shall be selected by the Contractor and approved by the Contracting Officer from the orientation schedule provided by AID.

(b) As either set forth in the Contract Schedule, or provided in writing by the Contracting Officer, the following may be authorized taking into consideration specific job requirements, Contractor's prior overseas experience, or unusual circumstances, in connection with orientation of individual Contractors:

(1) Modification orientation,

(2) Language training,

(3) Orientation for Contractor's dependents at Contract expense,

(4) Waiver of orientation for individual Contractor.

(c) Transportation costs and travel allowances not to exceed one round trip from the Contractor's residence to place of orientation and return will be reimbursed, pursuant to Clause 10 of the General Provisions, entitled "Travel and Transportation Expenses," if the orientation is more than 50 miles from the Contractor's residence. Allowable salary costs during the period of orientation are also reimbursable.

33. Post of Assignment Privileges (Dependents) (Dec. 1985)

(a) Health room services of the same type that are normally provided to AID direct-hire U.S. citizen employees shall be available for U.S. citizen contractor employees and their authorized dependents (regardless of citizenship) at the post of duty. These services do not include hospitalization, or predeparture or end of tour medical examinations. The services do include such medications as may be available, immunizations and preventive health measures, diagnostic examinations and advice, emergency treatment, and home visits as medically indicated.

(b) Privileges such as the use of APO, PX's, commissaries and officers' clubs are established at posts abroad pursuant to agreements between the U.S. and host governments. These facilities are intended for and usually are limited to members of the official U.S. establishment including the Embassy, AID Mission, USIA, and the Military. Normally, the agreements do not permit these facilities to be made available to non-official Americans.

34. Termination (Long Tour) (Apr. 1985) (FAR 52.249-12)

The Government may terminate this contract at any time upon at least 15 days' written notice by the Contracting Officer to the Contractor. The Contractor, with the written consent of the Contracting Officer, may terminate this contract upon at least 15 days' written notice to the Contracting Officer.

Section 13. FAR Clauses

The following FAR clauses are to be used along with the General Provisions, (Section 11), and when appropriate, the Additional General Provisions (Section 12), and shall be incorporated in each personal service contract by reference.

1. Inspection 52.246-5.
2. Examination of Records by Comptroller General 52.215-1.
3. Audit—Negotiation 52.215-2.
4. Privacy Act Notification 52.224-1.
5. Privacy Act 52.224-2.

6. Taxes—Foreign Cost Reimbursement Contracts 52.229-8.
7. Interest 52.232-17.
8. Assignment of Claims 52.232-23.
9. Protection of Government Buildings, Equipment, and Vegetation 52.237-2.
10. Notice of Intent to Disallow Costs 52.242-1.
11. Limitation of Cost 52.232-20.
12. Limitation of Funds 52.232-22.
13. Limitation of Liability—Services 52.246-25.
14. Anti-Kickback Procedures 52.303-7.

(Sec. 621, 75 Stat. 445 (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 435)

[51 FR 15268, Apr. 22, 1986, as amended at 51 FR 42844, Nov. 26, 1986; 52 FR 4145, Feb. 10, 1987; 52 FR 11075, Apr. 7, 1987; 52 FR 38098, Oct. 14, 1987; 53 FR 50633, Dec. 16, 1988]

APPENDIX E—[RESERVED]

APPENDIX F—USE OF COLLABORATIVE ASSISTANCE METHOD FOR TITLE XII ACTIVITIES

1. Introduction

This Appendix provides a detailed description of the collaborative assistance method of contracting. This is a specialized contracting system which may be used for contracting with educational institutions eligible under, and for activities authorized under, Title XII of the Foreign Assistance Act of 1961, as amended, under the circumstances described in AIDAR 715.613-71.

2. Purpose

The collaborative assistance system is designed to:

(a) Increase the joint implementation authority and responsibility of the contractor and the LDC;

(b) Encourage more effective collaboration between all participating parties (AID, host country, and contractor) at important stages, including the design stage of a technical assistance project.

3. Policy

The collaborative assistance approach represents an alternative method for long-term technical assistance which involves professional collaboration with eligible Title XII institutions and LDC counterparts for a problem-solving type activity to develop new institutional forms and capabilities, to devise operating systems and policies, and to conduct joint research and development—including training. In such an activity, the difficulty in defining, in advance, precise and objectively verifiable contractor inputs and long-term project content as a basis for payment usually requires a flexible approach to project design, contracting, and project implementation. Such flexibility is also essential to the collaborative style which is responsive to LDC desires in problem areas of great complexity and varying uncertainty. Other types of technical assistance, which are usually shorter in term are amenable to more precise definition in advance, or involve closely defined and relatively standardized services, or are otherwise more analogous to commodity resource transfers, may be suitable for other contracting methods, e.g., certain forms of institution building, on-the-job training, resource surveys, etc. The collaborative assistance method is an approved method for providing technical assistance when used in accordance with the circumstances outlined above, and with the guidelines set forth in paragraph 4, below.

4. Implementation Procedures

(a) *Introduction.* This paragraph 4, provides background information, guidelines and procedures to effect the implementation of the policy set forth in paragraph 3 of this appendix.

(b) *Conditions and practices.* In order for this policy to work effectively even when the proposed activity fits the criteria described under Policy, there must also be:

(1) Acceptance of the notion that the host country, in consultation with the contractor, is in the best position to make tactical, day-to-day decisions on project inputs within agreed-upon limitations and output expectations;

(2) Sufficient trust and respect between the Agency and the contractor to allow this flexible implementation authority;

(3) A direct-hire project monitor with appropriate background to be knowledgeable of progress and to assist in an advisory and facilitative capacity, both during and between periodic reviews. In addition, the following important conditions must be met:

(i) Adequate preproject communication between, and identification of assistance required by, the host government and USAID;

(ii) Full joint planning and improved project design ("Joint" as used herein refers to the primary parties, i.e., the collaborating institutions, as well as the host government and USAID. In some instances, it can also include other donors.);

(iii) Careful contractor selection, i.e., matching of the contractor's technical and managerial capabilities to the anticipated requirements of the overseas activity;

(iv) Establishment of relationships between host country, AID and contractor staff to include host country leadership, flexible implementation authority, and effective management by the contractor;

(v) Improved joint project evaluation, feedback, and replanning; and

(vi) Simplified administrative procedures and greater reliance on in-country logistical support.

(c) *Project Stages and Contractor Involvement.* In the long-term technical assistance projects as described above, there are four discrete but sometimes overlapping decision stages which take place—with the principal contractor usually involved in the last three.

(1) *Problem analysis and project identification.* After the host government has indicated a desire for U.S. collaboration on a particular problem and the AID field mission has determined that the proposed activity is consistent with its program goals and priorities, considerable effort is usually necessary to refine further the project purpose and type of assistance required and provide a basis for contractor selection. This is a crucial step and is focused on results sought—on what the prospective contractor is expected to produce in relation to resources to be used and to project purpose. It should result in a clear understanding of what the LDC wants, and an overall plan which includes agreement on specific objectives or outputs, acceptable types of activities and inputs and an initial budget—resulting in project documentation. At this step, AID makes decisions it cannot delegate on what it will support and at what cost. If needed to supplement its direct-hire expertise, AID can use outside consultants for analysis and advice but retains the ultimate decision for itself in collaboration with, but independent of, the requesting host government. (Normally, the proposed contractor for project definition and subsequent implementation should not have been involved in the problem analysis and project identification stage as a consultant to either the host country government, host institution, or USAID. If a potential contractor has been so involved, particular care must be taken to prevent actual or apparent organizational conflicts of interest in the procurement that follows. This could require at a minimum, a careful assessment and complete documentation of reasons for selection.)

Normally, there will need to be some mutual interaction between the overall planning stage outlined here and the detailed planning and design work which follows in the next phase. There will usually be some overlap, with preliminary decisions in this stage providing a basis for selection of implementing agents for stage (2) which in turn proceeds through some preliminary planning to guide completion of stage (1) as a basis for long-term contracting.

(2) *Project definition.* At this stage, having selected the implementing agent, the U.S. and LDC organizations which will be collaborating in carrying out the project are encouraged to work out, to their mutual satisfaction, the particulars of what to do and how to do it (i.e., detailed project design) within the context of LDC leadership and responsibility and the general agreements and budget reached in stage (1). The emphasis here is on the technical approach to be utilized and the scheduling and management of project inputs. This may involve a short-term reconnaissance and/or an extensive period of detailed joint planning and feeling out of what is feasible during a preliminary operating phase of the project, possibly lasting as much as a year or more. This stage recognizes the importance, for the problem-solving or ground breaking types of technical assistance, of involving the U.S. and LDC implementing organizations together as soon as the detailed design work begins. AID's role here is to facilitate, not direct, the joint planning, assure consistency with prior agreements or concur in changes, affirm that the implementing parties have agreed on a reasonable project design, and prepare or cause to be prepared the documentation required for stage (3), including any amendments that might be required to the project documentation. If and when a decision is made by the host government and AID to proceed into the operating phase with the same contractor, the U.S. intermediary should be treated as a cooperating partner in the negotiation of the subsequent long-term operating agreement(s) with the host government, host institution and AID.

(3) *Implementation.* The results of the approach outlined in the stage above should include, in addition to a better understanding and more meaningful commitment by all parties, the following specific products:

(i) A jointly developed life-of-project design which reflects the commitment of all parties and includes clear statements of purpose, principal outputs, eligible types of activity and expenditure limits, critical assumptions, and major progress indicators;

(ii) A workplan and input schedule for the first two years or at least as long as the expenditure period for the next obligation of project funds;

(iii) Provisions for any administrative support, special services or other inputs by the host country, contractor, and/or AID; and

(iv) A plan for periodic joint evaluation and review or progress and subsequent workplans, normally annually, with the participation of all parties.

Appropriate elements of these agreements and understandings are now embodied in a contract for project implementation, as described in paragraph (d)(3)(i) of the section on Contracting Implications. This contract allows the U.S. intermediary to apply its judgment, reflecting close collaboration with its LDC colleagues, in adjusting the flow of AID-financed inputs and in making other operational decisions with a minimum of requirements for prior AID approvals or contract amendments as long as the contractor stays within the bounds of the approved overall plan and budget. In this phase, AID will give technical assistance contractors the authority and responsibility for using their specialized expertise to the fullest extent in the scheduling and managing of project inputs.

(4) *Monitoring, joint evaluation and replanning.* With increased flexibility and responsibility for implementation placed with the technical assistance contractor, the host government, and/or institutional collaborator, improved and timely progress reporting and periodic, joint, and structured reviews of results and evolving plans are imperative as a basis for monitoring and evaluating contractor performance, revalidating or adjusting project design, and for determining future funding levels and commitments.

Both the contractor's annual report and the joint review should be structured within the framework of purpose, outputs, performance indicators, etc., originally established in the project indentification phase—as modified by detailed project design—and reflected in the Project Agreement and other pertinent documentation. The field review will normally serve as the occasion for discussing changes in or additions to previously agreed-to workplans as well as proposing changes in purpose, types of activities authorized and budgets which require contract amendment. Obviously, the appropriate host government, host institution, and senior contractor officials should be thoroughly involved in the process, which will have to be adapted to the conditions within specific projects and countries. An important USAID responsibility is to assure that there is appropriate host country participation in developing and improving project plans prior to new obligations of funds. The special requirements and responsibilities of the various parties shall also be reflected in the project agreement and contract terms and in guidelines on the content of annual reports, evaluation procedures, etc.

Standard checking on services actually delivered as a basis for reimbursement will be continued including appropriate audit of expenditures.

(d) *Contracting implications.* The principal elements of change in present contracting practices, as detailed below, are earlier selection and involvement of the prime contractor, contracting by major stages of project design and operations, minimizing the need for precontract negotiations and contract amendments and AID approvals, and providing technical assistance contractors with the authority and responsibility needed to manage implementation within the approved program bounds.

(1) *Selection.* The early involvement of the contractor in the definition stage of a long-term technical assistance project, after AID decides what it wants to undertake in stage (1), does not alter the Agency's responsibility to select its contractors carefully and in full compliance with appropriate contracting regulations and selection procedures. What is required here is that contractor selection be carried out at an earlier stage than has sometimes been the Agency practice in the past or with other types of contracts and in anticipation that the contractor, assuming adequate performance, will participate in all subsequent phases until final completion.

(2) *Contracting stages.* In contracting, the initial design stage should be separated from the longer term implementation stage without any AID commitment to undertake the second until it has exercised its independent judgment based on the product of the first plus any outside expert appraisal it and the host country want to use.

The long-term implementation stage itself may be further subdivided into contract periods which permit time between predetermined events for analysis, determination of new project requirements, and evaluation of performance prior to initiating the next phase by contract amendment/extension. If, for any reason, such an examination does not appear to warrant project continuation, then termination of the project and/or contract would be the next step.

(3) *Flexible implementation authority.* While good project design will eliminate or diminish many operational problems, the very nature of long-term technical assistance requires flexible implementation within agreed purposes, ultimate outputs, types of activity and available financing. With these key variables for AID management control established, contracts should be written so as to minimize the need for amendments and AID approval of changes in input particulars. This can be facilitated, both for the USAID, host country, institution, and the contractor by:

(i) *Retention of operational plan in contract and removal of workplan.* The contract narrative will contain the life-of-the-project Operational Plan, consistent with the project design as developed in stage (2) and reflected in the project documentation (and subsequent amendments thereto). The Operational Plan includes a statement of the purpose to be achieved, the outputs to be produced by the contractor and the types of activities to be undertaken, the more significant indicators of progress, a general description of the type of inputs that are authorized and intended to be provided during the life of the project, and the overall budget.

In order to allow adjustments at the implementation level without going through the contract amendment process, the detailed but short-term workplan containing specific descriptions and scheduling of all inputs such as numbers and types of staff, participants, commodities, etc., and specific activities, will not be a part of the contract. It is a working document to be modified in the field when the situation demands. The latest version will be available as a supporting document to justify proposed new obligation levels. Normally, the workplan and derived budget will cover a rolling two year period, i.e., each year another yearly increment is added after review and approval.

(ii) *Budget flexibility.* To support this implementation flexibility, contract budget or fiscal controls will be shifted from fixed line items for each input category to program categories, permitting the technical assistance contractor to adjust amounts and timing to achieve previously approved types of activity. This same type of flexibility should apply to any local currency supplied for project operations and/or contractor staff support. While an essential corollary to eliminating the workplan from the contract, this is not a unique procedure under cost reimbursement type contracts when the contractor has demonstrated adequate management capability.

(iii) *Negotiation of advance understandings.* To permit university and international research center contractors to manage their activities in accordance with their own policies and procedures and thereby sharpen their management responsibility while achieving substantial savings in time and reduced documentation, AID may negotiate advance understandings with its technical assistance contractors on dollar costs and administrative procedures that would be included by reference in its subsequent contracts. Upon receipt of a request from the contractor that their policies be reviewed and approved for usage in their contract in lieu of the standard terms and conditions, OP/PS/OCC, AID/W will initiate negotiations of such policies in an expeditious manner. The approved policies will be used in all relevant relations involving the Agency and respective contractors in lieu of traditional contract standard provisions, whenever this may be appropriate. This does not apply to local currency costs and host government procedures which must be negotiated in each case.

The purpose of the practices listed above is not only to give a qualified contractor the authority to adjust the composition and timing of inputs but to assign to it clear responsibility for managing such resources, as the evolving circumstances require, to achieve the agreed-upon outputs on a cost efficient basis. It should also reduce the delay and paperwork involved in frequent but minor contract amendments, and approvals. For the agency as a whole, both in the Mission and in AID/W, these have involved a large workload and cost.

(e) *Role of AID.* Nothing in this appendix is intended to delegate, diminish or otherwise modify AID's final responsibility for the prudent management of public funds and its own programs. Rather in withdrawing from the day-to-day involvement in and responsibility for the management of adjustment of the flow of inputs during the implementation, the best use of limited agency staff and time can be devoted to protecting the public interest in gaining maximum results from the funds appropriated for technical assistance by:

(1) Seeking optimum identification in terms of LDC priorities and U.S. capabilities;

(2) Mobilizing and selecting the best U.S. professional talent to design and carry out the project;

(3) Monitoring what is happening to assure adequacy of processes, get a feel of results, assure actual delivery of inputs being financed;

(4) Assuring that the attention of AID's implementation agents and LDC colleagues stay well focused on project purpose and results to be achieved (outputs) and the relation to these of what is being done and actual results;

(5) Providing intermediaries adequate authority and responsibility to adjust inputs promptly and sensitively to the evolving project situations.

Attention to these considerations, and to achievements of the preimplementation conditions prescribed above, should greatly increase the chances for successful project completion and impact on a cost effective basis, which is the final measurement of prudent management.

ATTACHMENT TO APPENDIX F—GUIDELINES FOR REQUESTS FOR EXPRESSIONS OF INTEREST

A. Length and Level of Detail

A Request for Expression of Interest (REI) should include more than just a short letter expressing interest, but should not be in the detail of a technical proposal (RFTP). The REI is not the only source of information that can or should be used for selection, but at least a minimum level of information should be contained in each document. A ten page paper that responds to the selection criteria included in every REI should be sufficient for evaluation purposes. The selection criteria should specify the technical inputs required for successful execution of the project and normally require a response in three general areas:

1. A description of the institution's capability to address the problem described in the REI.

2. Any related experience, whether in the country or region or in the problem area.

3. A demonstrable commitment of the institution to support the project.

The responses should address the capability, experience, and commitment to the particular project.

B. Specific Personnel Information

The response should specify within the areas set out in the selection criteria the following planning and personnel factors.

1. The design team plan and the scope of work for each member.

2. A list of candidates for the design team and their credentials.

3. A list of possible candidates for long-term assignment to the project. (Since there has been no project design, the specific technical assistance slots and technical responsibilities are vague. But it is expected that at least half of the personnel needs can be estimated early in the project. The institution should make its best guess for the team and present to the Agency the persons or types of persons with whom they are likely to contract.)

C. Multiple Institution Submissions

Joint effort on the part of several institutions is encouraged when appropriate. A single institution may submit an expression of interest for part of the project without knowledge of other collaborators or it may submit information in response to A and B of this attachment as part of a suggested collection of institutions. In either case, a proposed plan for cooperation is necessary.

However, such joint efforts must specify the division of responsibilities for the planning and personnel factors indicated in B of this attachment. Often AID will identify the need for cooperation and suggest such an effort in the REI. Even if AID does not suggest collaboration, joint efforts with a description of the cooperation would be an appropriate way to respond to an REI.

(Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435)

[49 FR 13301, Apr. 3, 1984, as amended at 49 FR 33669, Aug. 24, 1984; 50 FR 16089, Apr. 24, 1985; 51 FR 20652, June 6, 1986; 52 FR 6160, Mar. 2, 1987]

APPENDIX G—APPROVAL AND REPORTING PROCEDURES FOR CONTRACTOR SALARIES

1. Purpose

This appendix does the following:

(a) Provides guidelines for the use of prudent judgment when considering salaries, especially salaries exceeding the FS-1 maximum salary limitation (5 U.S.C. 5308 and Pub. L. 95-66);

(b) Establishes procedures for justification of salary approvals;

(c) Prescribes procedures for control numbers and submission of copies of salary approvals to SER/OP/PS/SUP;

(d) Establishes a seminannual report of salary approvals for the Deputy Administrator.

2. Procedures

(a) *Salary approvals.* In accordance with 731.205-6, 731.371, and 731.772, contracting officer approvals of salaries exceeding the FS-1 rate are to be based upon a memorandum from the technical office approved by the Assistant Administrator or Mission Director having program responsibility for the contract. The reasonableness of proposed salaries exceeding the FS-1 level must be evaluated by the appropriate technical office in terms of the technical competence required, scope of supervisory responsibilities involved, and the relationship of the proposed salary level to the individual's customary salary level for similar work. Even thorough approval of salary levels above the FS-1 rate are justified primarily by the Assistant Administrator or Mission Director having program responsibility, it is the contracting officer's responsibility to scrutinize increases as a matter of business acumen whenever AID negotiations deal with any salaries payable under contracts. Increases in the FS-1 statutory salary limitation are not, and shall not be by themselves, a basis for upward salary revisions of contractor employees. Proposals for such revisions should be considered normally when contracts are renewed, and must be carefully reviewed and negotiated to ensure that increases are not automatically granted without corresponding increases in the quality or quantity of services rendered. Salaries below the FS-1 maximum level should also be fully justified, even though formal approval procedures may not be involved. Personnel compensation negotiated and payable under AID contracts should be at the mimimum levels necessary to attract needed technical services in a competitive market. Rates should be determined by the "market place" where the types of services are obtained. Using such criteria, very few salaries can be expected to approach or exceed the FS-1 level.

Actual discussions with contractors concerning salaries should be held only by persons authorized to negotiate and execute contracts. (See AIDAR Appendix A.)

(b) *Justification of Approvals.* There will be cases where the services required are so unique and highly specialized that few persons are available to perform them. In such instances, if justifications for exceptional salaries are needed, particularly where the salary would exceed the FS-1 level, the project officer will be consulted. If no alternative can be found, the project officer will prepare a salary justification to support the negotiator's action. It is the negotiator's responsibility to see to it that such cases are fully justified and that a complete record of the rationale is included in his memorandum for the contract file.

3. Approval Control Numbering and Submission to MS/OP

Copies of all approvals of salaries that exceed that FS-1 level are required to be sent to MS/OP/PS/SUP. To assist MS/OP in determining that they are receiving all copies from each approving office, approving officials will have a consecutive control number starting each fiscal year assigned to each approval by their office, the record of which will be maintained separately from other approval documents.

4. Semiannual Report to the Deputy Administrator

Commencing with March 31, 1978, a semiannual report listing all salary approvals that exceed the FS-1 maximum level will be sent to the Deputy Administrator of AID by the Office of Procurement.

(Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435)

[49 FR 13301, Apr. 3, 1984, as amended at 50 FR 50303, Dec. 10, 1985; 51 FR 20652, June 6, 1986; 52 FR 4146, Feb. 10, 1987; 55 FR 6805, Feb. 27, 1990]

APPENDIX H—RESPONSE TO AUDIT RECOMMENDATIONS

1. Purpose

This appendix establishes consolidated procedures for responding to post-award audit reports. The procedures in this appendix are not applicable to pre-contract audit surveys.[1]

2. Applicability

The procedures set forth in this appendix apply to all audit recommendations concerning costs questioned under AID-direct contracts whether the recommendation is assigned to MS/OP, or to a Mission or Area Contracting Officer.

3. The Role of the Inspector General

(a) *Legislative and procedural requirements.* Public Law 96-304, July 8, 1980 (Section 305) requires that audits involving questioned costs be resolved within six months. Further, OMB Circular A-73, Audit of Federal Operations and Programs, requires that each agency establish policies and procedures for prompt and proper resolution of audit recommendations, and establish standards for such policies and procedures. The Administrator has approved procedures for audit follow-up and resolution, as recommended by the Inspector General (IG).

(b) *IG responsibilities.* (1) The IG and Regional Inspectors General (RIG) are responsible for tracking and following up on audit recommendations to insure prompt and proper resolutions, and for reporting on monetary recoveries resulting from audit reports. Following receipt of the contracting officer's disposition of the substance of an audit recommendation, the IG and RIG are responsible for determining whether or not to officially close the recommendations.

(2) If the cognizant RIG has not received satisfactory evidence of resolution of an audit recommendation within four months of issuance, the RIG will request a status report from the office assigned action responsibility (see also paragraph 5b(3) of this appendix). If no evidence of satisfactory resolution is received by six month, the IG follows up directly with the cognizant Assistant Administrator. The IG may request the Deputy Administrator to take action on any recommendation open for more than six months.

(3) If the cognizant RIG does not agree to an action office's disposition of an audit recommendation, the RIG will first attempt to resolve the issue with the action office. If this is unsuccessful, the issue will be re-

---

[1] Contracting officers often request audit advice and assistance in evaluating contractor's proposals prior to award. FAR 15808(b) requires the contracting officer to provide a copy of the memorandum of negotiation to the auditor (the cognizant RIG) when a pre-award survey has been performed, to inform the auditor of the disposition and usefulness of the pre-award survey. Provision of a copy of the memorandum of negotiation to the cognizant RIG, pursuant to FAR 15.808(b), constitutes response to a pre-award audit survey.

ferred to the IG, who will attempt resolution with the cognizant office head or Assistant Administrator. If the issue cannot be resolved at this level, it can then be referred by IG to the Deputy Administrator for decision. (See also paragraph 4.b., concerning the role of the contracting officer.)

(4) If the cognizant RIG questions a contracting officer's decision not to seek recovery of audit questioned cost, the RIG may submit the issue to the cognizant Regional Legal Advisor, or to the General Counsel's Office. (See also paragraph 4.b., concerning the role of the contracting officer.)

4. The Role of the Contracting Officer

(a) Pursuant to the Contract Disputes Act of 1978 (41 U.S.C. 601-613), as implemented in FAR Part 33, and as provided in FAR 1.6 and Subpart 701.6 of the AIDAR, contracting officers have the authority to negotiate and enter into settlements with contractors of costs questioned under audit reports. With this authority goes the responsibility for insuring that such settlements are properly justified and documented, and promptly executed.

(b) A negotiated settlement of questioned costs, executed by the contractor and the contracting officer; or a contracting officer's final decision pursuant to the disputes clause (in the event questioned costs are not settled by negotiated agreement), are final, subject only to a contractor's appeal, either under the provisions of the Disputes Act, or to the Courts. Regardless of internal controls, such as IG or RIG's right to maintain a recommendation as open (see paragraph 3.b(3) of this Appendix, or to question a contracting officer's decision regarding questioned costs (see paragraph 3.b(4) of this Appendix), the contracting officer's decision as between the Government and the contractor is final, subject to established methods of contractor appeal. Authority to negotiate settlements, or make final decisions on questioned costs rests with duly delegated contracting officers alone.

5. Procedures

In order to insure that resolutions of audit recommendations are properly justified and documented, the following procedures are established:

(a) *General.* (1) Copies of all correspondence concerning resolution of an audit recommendation must be promptly sent to the cognizant RIG. All correspondence provided to the cognizant RIG should include the contractor's name, the contract number(s), and the audit report and recommendation number(s).

(2) In transmitting post-award audit reports to action offices, the RIG's attached memoranda shall identify each contract by its number and request an initial written response within 30 days. Under the Agency's audit recommendation follow-up system, the RIG's are following up to insure that action offices provide the 30-day responses. The IG is required to provide a copy of the initial response to several Congressional Committees. It is recognized that the initial response to audit reports questioning contract costs takes the form of a notification to the contractor by the contracting officer. The cognizant RIG will accept copies of the contracting officer's notification as the initial response to the audit report if:

—The notification clearly indicates the title and/or number of the audit report.

—The notification covers all the cost issues raised in the audit report. If it does not, the cognizant RIG requires a separate memorandum explaining the contracting officer's position on the remaining cost issues.

(3) Action offices have six months from receipt of an audit recommendation to resolve that recommendation, however, every effort will be made to resolve the recommendation within 120 days of its receipt. The contracting officer is responsible for keeping the cognizant RIG informed regarding the status of open audit recommendations in accordance with the procedures established in this Appendix. If for any reason a recommendation cannot be resolved within the 120 day period, the contracting officer must so advise the cognizant RIG in writing, giving the reasons. This notification is to be provided as soon as possible, but in any event at least two weeks before expiration of the 120 day period. The contracting officer is also responsible for insuring that RIG's four-month follow-up (see paragraph 3.b(2) of this Appendix is promptly answered. For details on RIG's four and six month follow-up procedures, see paragraph 3.b(2), above.

(4) Responses to audit recommendations must be in writing, properly documented to clearly explain the action taken. When the contracting officer is satisfied that action on a recommendation has been completed, and the file properly documented, he or she should specifically request that the cognizant RIG consider the audit recommendation closed (see paragraph 6 of this Appendix). The cognizant RIG should be requested to notify the contracting officer promptly, in writing, if for any reason they are not prepared to officially close the recommendation, providing the reasons. Such notice should identify the contract number and refer to the contracting officer's last correspondence.

(b) *Audit recommendations questioning costs under AID direct contracts.* (These procedures are mandatory for audit recommendations assigned to MS/OP. It is recommended that they be applied, suitably adapted, to audit recommendations assigned to Missions which have been delegated contracting authority or to an area contracting officer).

(1) *Documentation and control.* (a) All correspondence to and from the cognizant RIG shall specify the contract number, contractor's name, audit report number, and recommendation number, plus the amount of the questioned costs allowed or sustained as disallowed by the contracting officer.

(b) All incoming audits containing recommendations for action by MS/OP are to be immediately submitted to OP/PS/SUP. OP/PS/SUP will log in the audit report, recording the recommendation numbers and established due dates for all recommendations assigned to MS/OP. OP/PS/SUP will then transmit the audit, through the cognizant division chief, to the contracting officer with action responsibility.

(c) OP/PS/SUP will establish a tickler file of recommendations assigned to SER/OP, and will provide internal reminders and follow-ups.

(d) The contracting officer will keep OP/PS/SUP advised on the current status of open recommendations by providing OP/PS/SUP with a copy of official audit-related correspondance between the contracting officer and the RIG. Any necessary follow up by OP/PS/SUP to update data for preparation of reports shall be made through the cognizant division chief.

(2) *Notification, negotiation, and settlement.* (a) Within two weeks after receipt of the audit report, the contracting officer shall formally notify the contractor by letter of the costs questioned. This notification shall require the contractor to respond to the contracting officer within 30 calendar days of receiving the letter. If warranted in the circumstances, invite the contractor to participate in negotiations to arrive at a mutually acceptable resolution of such costs. If no response has been received within 30 calendar days following the initial notification to the contractor of the questioned costs, issue a follow-up letter to the contractor requesting a response within 20 calendar days. In this follow-up the contractor should be advised that failure to respond within the specified period will result in the issuance of a final decision, pursuant to the disputes clause of the contract. If no response is received 20 calendar days after the follow-up letter, the contracting officer makes a final decision in accordance with FAR 33.011 regarding the questioned costs and issues, in writing, the appropriate contracting officer's decision as authorized in the Disputes clause of the contract. A copy of each letter, and any decision, shall be sent to the cognizant RIG (and, when the audit recommendation is assigned to MS/OP, to OP/PS/SUP).

(b) If the contractor responds to the contracting officer's letter identifying questioned costs, but an acceptable settlement is not achieved with a reasonable period of time (normally, 3 months from the date of initial notification), the contracting officer shall consider negotiations to have reached an impasse. The contracting officer shall then issue the appropriate decision as authorized in the disputes clause of the contract. A copy of this decision must be sent to the cognizant RIG (and, when the audit recommendation is assigned to MS/OP, to OP/PS/SUP). See also paragraph 5b(4) of this Appendix regarding notification of the Controller.

(c) Normally, the contractor will respond to notification of questioned costs, and a mutually acceptable settlement can be negotiated. Such negotiated settlements must be documented for the contract file by the contracting officer. The written record must include:

(i) The initial audit findings, in detail, including all questioned costs, item by item.

(ii) The contracting officer's position, as reflected in the notification to the contractor, on each of the audit findings, and questioned costs. If there are any differences between the contracting officer's position and that of the audit, these must be explained, showing exactly what the differences are, why, and how they were arrived at (including discussions, comments, and advise or clearances by other offices).

(iii) A final summary analysis showing the audit finding; the contracting officer's initial position; the contractor's response; subsequent positions of both parties, and final resolution. This must be in sufficient detail to permit any reasonable person to understand what the issues were, how much was involved, what items were adjusted (plus how much and why), what the final resolution was, and why.

A copy of this written record, clearly marked to indicate the audit report and recommendation number(s) must be sent to the cognizant RIG (and, when the audit recommendation is assigned to MS/OP, to OP/PS/SUP). See also paragraph 5b(4) of this Appendix, regarding notification of the Controller.

(3) *Collection.* The preferred method of collection is through the issuance of a Bill for Collection, in accordance with Agency policy on cash management. Use of any other collection method must be coordinated in advance with FM/PAFD. Bills for Collection are issued by the Controller in accordance with the procedures set forth in paragraph 5b(4) of this Appendix.

(4) *Notification of the controller.* (a) When a settlement has been negotiated, or a final decision has been issued pursuant to the disputes clause, it remains to collect the amount determined due to AID (substained disallowances). The contracting officer is re-

sponsible for notifying the Controller to issue a Bill for Collection. A copy of this notification must be sent to the cognizant RIG, and to IG/PPP (and to OP/PS/SUP, for audits assigned to MS/OP).

(b) The notification to the Controller must contain the following information:

(i) Identification of the contract/task order/work order, providing the contract number, and the contractor's name and address;

(ii) The most recent accounting and appropriation data (PIO/T number and allotment number, etc.);

(iii) The amount due to AID;

(iv) The applicable audit and recommendation number(s): and

(v) A copy of the contracting officer's negotiated settlement or final decision pursuant to the disputes clause (see paragraph 5b(2) of this Appendix).

(c) The notification must request that a copy of the Bill for Collection be sent to the cognizant RIG, IG/PPP, and the contracting officer. The contracting officer is responsible for following up to insure that the Bill for Collection has been issued, and that a copy is in fact provided to the cognizant RIG and to IG/PPP, and is placed in the contract file.

(d) If the Contractor appeals the final decision pursuant to the disputes clause, the contracting officer must promptly notify the Controller to suspend collection pending resolution of the appeal. Suspension action by the Controller shall be taken in consultation with the Office of the General Counsel, pursuant to Delegation of Authority No. 80. The contracting officer is responsible for notifying the Controller regarding resolution of any appeal.

6. Closing Audit Recommendations

When the contracting officer has completed all action required by an audit recommendation in accordance with the procedures established in this appendix, he/she shall request that the recommendation be considered officially closed. The memorandum to the cognizant RIG shall specifically identify the audit report and recommendation number(s), summarize the actions taken, and explain why the recommendation(s) should be considered closed, providing sufficient evidence to permit the cognizant RIG to make a reasonable decision. For audit recommendations involving questioned costs which result in sustained disallowances, RIG and IG/PPP will accept a copy of the issued Bill for Collection as evidence to close a recommendation. A copy of the request to close a recommendation shall be sent to IG/PPP (and, for audits assigned to MS/OP, to OP/PS/SUP).

7. Clearances

(a) *General.* All proposed post-award audit responses, whether to internal audits prepared by the IG, or to GAO audits, prepared by MS/OP are to be cleared in accordance with DAA/MS requirements in effect at the time the response is prepared. Responses prepared by Mission or Area contracting officers will be cleared in accordance with applicable Mission and Bureau procedures.

(b) *Final decisions pursuant to the disputes clause.* If settlement of an audit requires a final decision by the contracting officer in accordance with FAR 33.011, pursuant to the disputes clause, such decisions must be cleared by GC or the cognizant Mission or Regional Legal Advisor.

(Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435)

[49 FR 13302, Apr. 3, 1984, as amended at 50 FR 50303, Dec. 10, 1985; 51 FR 20652, June 6, 1986; 55 FR 6805, Feb. 27, 1990]

APPENDIX I—AID'S ACADEMIC PUBLICATION POLICY

1. Statement of Policy

This is a statement of AID policy on publication, or release to parties other than those specifically authorized, of unclassified materials gathered or developed under contracts with academic institutions.

2. Underlying Principles

AID favors and encourages the publication of scholarly research as well as the maximum availability, distribution, and use of knowledge developed in its program.

This policy statement does not deal with material that is classified for security reasons. It does deal with considerations of national interest, not of sufficient gravity to warrant security classification, but serious enough to affect adversely the conduct of U.S. assistance programs. Consequently, in addition to the requirements of courtesy, propriety, and confidence which normally guide scholars in their work, there should also be consideration of the potential repercussions of publication on the successful execution of development and other cooperative programs in which the United States and foreign countries are involved.

3. Operational Definitions

The Agency draws a distinction between two kinds of manuscripts which a scholar may wish to publish:

(a) A report which is prepared and delivered to the Agency under the terms of the contract (a "contract manuscript"); and

(b) An article or book based upon experience and information gained under an AID contract but not prepared or delivered under the contract (a "non-contract manuscript").

There are two kinds of actions, to be specified in the contract, which the Agency can take upon notification of a contractor's desire to publish:

(a) Comment only, under which AID and the foreign government involved may review the manuscript, and have their comments considered seriously by the contractor prior to publication; and

(b) Authorization for release, which AID may withhold if reconciliation between the national interest and the author's interest is impossible.

4. Policy Statements

(a) AID, as a general rule, will not require an academic institution to obtain permission to publish the written work produced under a contract. It will ask for the opportunity to review the manuscript for comment only, prior to publication.

In the case of a contract manuscript, AID reserves the right to disclaim endorsement of the opinions expressed; if it is a noncontract manuscript, AID reserves the right to disassociate itself from sponsorship or publication.

(b) On the other hand, AID may reserve the right of authorization for release in those exceptional cases where conditions exist making it reasonably foreseeable, in light of the contract's scope of work and the manner and place of performance, that the written work to be prepared and delivered under the contract may have adverse repercussions on the relations and programs of the United States. Where this right is reserved, it must be so specified in the contract. In determining where to reserve such right, AID will consider all relevant factors, including:

(1) The extent to which prompt and full performance of the contract will require access, facilitated by reason of the contract, to information not generally available to scholars;

(2) The extent to which the work involves matters of political concern to foreign countries, particularly where any substantial part of the work is to be performed therein;

(3) The extent to which, by reason of AID's close involvement and cooperation in the performance of the contract, the work product may be so identified with AID itself as to prevent effective disclaimer of AID endorsement thereof;

(4) The extent to which the objective of the contract is to provide advice to AID or to a foreign government of immediate operational significance in the conduct of the AID program or the implementation of governmental programs in the host country;

(5) The desires of the host country.

5. Implementation

The successful implementation of this policy on publication rests on a thorough understanding and acceptance of these principles by AID and the prospective contractor. The actual publications provision for a particular contract, then, would be so worded as to reflect the agreement reached in the contract negotations.

AID's concern with noncontract manuscripts is related to the identification of a manuscript with the U.S. Government. This concern will be modified by the passage of time following termination of the contract.

In the normal case of prepublication review for AID comment, the institution will submit a copy of the manuscript not later than the date of submission to the publisher. This gives the Agency time to comment if it is deemed appropriate. However, in the case of review for authorization, timely notification of AID's response will be given, consistent with the size of the manuscript and the number and location of the parties involved.

The Agency will make every effort to expedite this review procedure in accordance with the underlying principle described at the beginning of this policy statement.

(Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435)

[49 FR 13304, Apr. 3, 1984]

Appendix J—Direct AID Contracts With Cooperating Country Nationals and With Third Country Nationals for Personal Services Abroad

1. General

(a) *Purpose.* This appendix sets forth the authority, policy, and procedures under which AID contracts with cooperating country nationals and third country nationals for personal services abroad.

(b) *Definitions.* For the purpose of this appendix:

(1) "Personal services contract (PSC)" means a contract which establishes an employer-employee relationship for the performance of services personally by the contractor. The services may include general continuing services as well as specifically identifiable tasks.

(2) "Employer-employee relationship" means an employment relationship in which

the employer supervises, or has the power to supervise, the performance of the work including, for example, the manner in which the work is to be performed, the days of the week and hours of the day in which it is to be performed, and where the work is to be performed. Another indication of this relationship is the provision by the employer of workspace and basic tools and materials for use in accomplishing the work.

(3) "Non-personal services contract" means a contract which directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task and which establishes an independent contractor relationship between the contractor and the activity contracting for the services.

(4) "Independent contractor relationship" means a contract relationship in which the contractor is not subject to the supervision and control prevailing in relationships between the Government and its employees. Under these relationships, the Government does not normally supervise the performance of the work, the manner in which it is to be performed, the days of the week or hours of the day in which it is to be performed, or the location of performance.

(5) "Contractor" means a cooperating country national or third country national who has entered into a contract pursuant to this Appendix.

(6) "Cooperating country" means the country in which the employing AID mission is located.

(7) "Cooperating country national (CCN)" means an individual who is a cooperating country citizen or a non-cooperating country citizen lawfully admitted for permanent residence in the cooperating country.

(8) "Third Country National (TCN)" means an individual (a) who is neither a citizen nor a permanent legal resident alien of the United States nor of the country to which assigned for duty, and (b) who is eligible for return to his/her home country or country of recruitment at U.S. Government expense [see Section 13, General Provision 11 paragraph (b)(1)].

(9) "Resident Alien" means a non-U.S. citizen lawfully admitted for permanent residence in the United States.

2. Legal Basis

(a) Section 635(b) of the Foreign Assistance Act of 1961, as amended, hereinafter referred to as the "FAA", provides the Agency's contracting authority for nonpersonal services.

(b) Section 636(a)(3) of the FAA authorizes the Agency to enter into personal services contracts with individuals for personal services abroad and provides further that such individuals ". . . shall not be regarded as employees of the U.S. Government for the purpose of any law administered by the Civil Service Commission." [1]

3. Applicability

(a) This appendix applies only to personal services contracts with CCNs or TCNs to provide assistance abroad under section 636(a)(3) of the FAA.

(b) This appendix does not apply to:

(1) Contracts for non-personal services with TCNs or CCNs; such contracts are covered by the basic text of the FAR and the AIDAR.

(2) Personal services contracts with U.S. citizens or U.S. resident aliens for personal services abroad; such contracts are covered by Appendix D of this Chapter.

(3) Appointments of experts and consultants as AID direct-hire employees, covered by AID Handbook 25, Employment and Promotion.

4. Policy

(a) *General.* AID may finance, with either program or operating expense funds, the cost of personal services as part of the Agency's program of foreign assistance by entering into a direct contract with a CCN or a TCN for personal services abroad.

(1) *Program Funds.* Program funds may be obligated for periods up to five years where necessary and appropriate to the accomplishment of the tasks involved.

(2) *Operating Expense Funds.* Operating funds may be obligated for periods not to exceed twenty-four months where necessary and appropriate to the accomplishment of the tasks involved.

(b) *Limitations on personal services contracts.*

(1) Personal services contracts may only be used when adequate supervision is available.

(2) Personal services contracts may be used for commercial activities. Commercial activities provide a product or service which could be obtained from a commercial source. See Attachment A of OMB Circular A-76 for a representative list of such activities.

(3) Personal services contracts may be used for Governmental functions (defined by OMB Circular A-76 as functions so intimately related to the public interest as to mandate performance by Government employees) *except:*

(i) Negotiating on behalf of the United States with foreign governments and public international organizations.

NOTE: Negotiating on behalf of the United States with private individuals and entities is permitted.

---

[1] The Civil Service Commission is now the Federal Office of Personnel Management.

(ii) Entering into any agreement (e.g., loan, grant, contract) on behalf of the United States.

(iii) Making decisions involving governmental functions such as planning, budget, programming and personnel selection. Services will be limited to making recommendations with final decision-making authority reserved for authorized AID direct-hire employees.

(iv) Supervision of AID direct-hire U.S. citizen employees.

(v) Services which involve security classified material.

(c) *Conditions of Employment.*

(1) *General.*

AID PSC contractors are not to be regarded as employees of the U.S. Government for the purpose of any law administered by the U.S. Office of Personnel Management, are not included under any retirement or pension program of the U.S. Government, and are not eligible for the Incentive Awards Program covered by Uniform State/AID/USIA regulations. (A USAID may institute its own incentive awards program for PSCs, although such a program may not authorize meritorious step increases in salary.) Other than these exceptions, CCNs and TCNs who are hired for work in a cooperating country under PSCs generally will be extended the same benefits and be subject to the same restrictions as Foreign Service Nationals (FSNs) employed as direct hires by the AID Mission.

(2) *Compensation.*

(i) It is AID's general policy (see AIDAR 722.170) that PSC compensation may not, without the approval of the Mission Director or Assistant Administrator, exceed the prevailing compensation paid to personnel performing comparable work in the cooperating country. Compensation for TCN or CCN personal service contractors set in accordance with the provisions in 4(c)(2)(ii) below satisfies this requirement.

(ii) In accordance with section 408(a)(1) of the Foreign Service Act of 1980, a local compensation plan forms the basis for all compensation payments to FSNs which includes CCNs and TCNs. The plan is each post's official system of position classification and pay, consisting of (a) the local salary schedule which includes salary rates, statements authorizing fringe benefit payments, and other pertinent facets of compensation for TCNs and CCNs; and (b) the local position classification system as reflected in the Local Employee Position Classification Handbook (LEPCH) or equivalent in effect at the Mission. Compensation for PSCs will be in accordance with the local compensation plan, to the extent that it covers employees of the type or category being employed, unless the Mission Director determines otherwise. If the Mission Director determines that compensation in accordance with the local plan would be inappropriate in a particular instance, then compensation will be set in accordance with (in order of preference):

(A) Any other Mission policies on foreign national employee compensation; or

(B) Paragraph 4 (c), (d), (e), and (f) of AIDAR Appendix D.

(iii) The earning of leave (annual and sick), allowances and differential (if applicable), salaries and all other related benefits can not be enumerated in this Appendix as they vary from Mission to Mission and are based upon the compensation plan for each.

(iv) Unless otherwise authorized, the currency in which compensation is paid to contractors shall be in accordance with the prevailing local compensation practice of the post.

(v) CCN and TCN contractors are eligible for allowances and differentials on the same basis as direct-hire FSN employees, under the post compensation plan.

(vi) An AID PSC who is a spouse of a current or retired U.S. Civil Service, U.S. Foreign Service, or U.S. military service member, and who is covered by their spouse's government health or life insurance policy, is ineligible for a contribution toward the costs of annual health or life insurance.

(vii) Retired CCNs or TCNs may be awarded personal services contracts without any reduction in or offset against their Government Annuity.

5. *Soliciting for Personal Services Contracts*

(a) *Project Officer's responsibilities.* The Project Officer (or the responsible requiring office), will prepare a written detailed statement of duties and a statement of minimum qualifications to cover the position being recruited for. The statement shall be included in the procurement request; the procurement request shall also include the following additional information as a minimum:

(1) The specific foreign location(s) where the work is to be performed, including any travel requirements (with an estimate of frequency);

(2) The length of the contract, with beginning and ending dates, plus any options for renewal or extension;

(3) The basic education, training, experience, and skills required for the position;

(4) A certification from the officer in the Mission responsible for the LEPCH or equivalent that the position has been reviewed and is properly classified as to a title, series and grade in accordance with the LEPCH. If the position does not fall within the LEPCH or equivalent system, an estimate of compensation based on subparagraph 4(c)(2)(ii) (A) or (B) of Appendix D after consultations or in coordination with the contract officer or executive officer.

(5) A list of Government or host country furnished items (e.g., housing); and

(6) If the PSC will be providing consulting services, include the justification required by AIDAR 737.270(b).

(b) *Contracting Officer's responsibilities.*

(1) The Contracting Officer will prepare the solicitation for personal services which shall contain:

(i) Three sets of certified biographical data and salary history. (Upon receipt, one copy of the above information shall be forwarded to the Project Officer.)

(ii) A detailed statement of duties or a completed position description for the position being recruited for.

(iii) A copy of the prescribed contract Cover Page, Contract Schedule, General Provisions and Additional General Provisions, if applicable, as well as the FAR clauses to be incorporated by reference.

(iv) A copy of Attachment 2C to Chapter 2 of A.I.D. Handbook 24, entitled Employee Responsibilities and Conduct.

(2) The Contracting Officer shall comply with the requirements of AIDAR 706.302-70(c) as detailed in paragraph 5(c) below.

(c) *Competition.*

(1) Under AIDAR 706.302-70(b)(1), personal services contracts are exempt from the requirements for full and open competition with two limitations that must be observed by Contracting Officers:

(i) Offers are to be requested from as many potential offerors as is practicable under the circumstances, and

(ii) A justification supporting less than full and open competition must be prepared in accordance with FAR 6.303.

(2) A class justification was approved by the A.I.D. Procurement Executive on January 20, 1987 which will satisfy the requirements of AIDAR 706.302-70(c)(2) for a justification in accordance with FAR 6.303 subject to the following condition for use for personal services contracts with Cooperating Country Nationals and Third Country Nationals:

(i) New contracts are publicized consistent with Mission/Embassy practice on announcement of direct hire FSN positions. Renewals or extensions with the same individual for continuing service do not need to be publicized.

(ii) A copy of the class justification (which was distributed to all A.I.D. Contracting Officers via Contract Information Bulletin) must be included in the contract file, together with a written statement, signed by the Contracting Officer, that the contract is being awarded pursuant to AIDAR 706.302-70(b)(1); that the conditions for use of this class justification have been met; and that the cost of the contract is fair and reasonable.

(3) Since the award of a personal services contract is based on technical qualifications, not price, and since the biographical data and salary history, are used to solicit for such contracts, FAR Subparts 15.4 and 15.5 and FAR Parts 52 and 53 are inappropriate and shall not be used. Instead, the solicitation and selection procedures outlined in this Appendix shall govern.

(4) If the appropriate competitive procedure in paragraph (2) above is not followed, the Contracting Officer must prepare a separate justification as required under AIDAR 706.302-70(c)(2).

6. Negotiating a Personal Services Contract

Negotiating a personal services contract is significantly different from negotiating a nonpersonal services contract because of the employer-employee relationship; therefore, the selection procedures are more akin to the personnel selection procedures.

(a) *Project Officer's responsibilities.* The Project Officer shall be responsible for reviewing and evaluating the applications received in response to the solicitation issued by the Contracting Officer. If deemed appropriate, interviews may be conducted with the applicants before the final selection is submitted to the Contracting Officer.

(b) *Contracting Officer's responsibilities.*

(1) The Contracting Officer shall forward a copy of each statement of biographical data and salary history received under the solicitation to the Project Officer for evaluation.

(2) On receipt of the Project Officer's recommendation, the Contracting Officer shall conduct negotiations with the recommended applicant. The terms and conditions of the contract will normally be in accordance with the local compensation plan which forms the basis for all compensation payments paid to FSNs which includes CCNs and TCNs.

(3) The Contracting Officer shall use the certified salary history on the certified statement of biographical data and salary history as the basis for salary negotiations, along with the Project Officer's cost estimate.

(4) The Contracting Officer will obtain necessary data for a security and suitability clearance to the extent required by A.I.D. Handbook 6, Security.

7. Executing a Personal Services Contract

Contracting activities, whether A.I.D./W or Mission, may execute personal services contracts, provided that the amount of the contract does not exceed the contracting authority that has been redelegated to them under Delegation of Authority No. 1103 "To the Assistant to the Administrator for Management, Concerning Acquisition Functions" (50 FR 23842), as amended (see AIDAR 702.170-10).

In executing a personal services contract, the contracting officer is responsible for insuring that:

(a) The proposed contract is within his/her delegated authority;

(b) A written detailed statement of duties covering the proposed contract has been received;

(c) The proposed scope of work is contractible, contains a statement of minimum qualifications from the technical office requesting the services, and is suitable for a personal services contract in that:

(1) Performance of the proposed work requires or is best suited for an employer-employee relationship, and is thus not suited to the use of a non-personal services contract;

(2) The scope of work does not require performance of any function normally reserved for Federal employees (see paragraph 4(b) of this Appendix); and

(3) There is no apparent conflict of interest involved (if the contracting officer believes that a conflict of interest may exist, the question should be referred to the cognizant legal counsel).

(d) Selection of the contractor is documented and justified. AIDAR 706.302-70(b)(1) provides an exception to the requirement for full and open competition for personal services contracts abroad (see paragraph 5(c) of this Appendix);

(e) The standard contract format prescribed for Cooperating Country Nationals and Third Country Nationals personal services contracts (Sections 10, 11, 12, 13 14, and 15 to this Appendix as appropriate) is used; or that any necessary deviations are processed as required by AIDAR 701.470.

(f) The contractor has submitted the names, addresses, and telephone numbers of at least two persons who may be notified in the event of an emergency (this information is to be retained in the contract file);

(g) The contract is complete and correct and all information required on the contract Cover Page (AID form 1420-36B) has been entered;

(h) The contract has been signed by the contracting officer and the contractor, and fully executed copies are properly distributed;

(i) The following clearances, approvals and forms have been obtained, properly completed, and placed in the contract file before the contract is signed by both parties:

(1) Security clearance to the extent required by A.I.D. Handbook 6, *Security;*

(2) Mission, host country, and project office clearance, as appropriate;

(3) Medical clearance(s) based on a full medical examination(s) and certification of same by a licensed physician. The physician's certification must be in the possession of the contracting officer prior to signature of contract. If a TCN is recruited, medical clearance requirements apply to the contractor and for each dependent who is authorized to accompany the contractor.

(4) The approval for any salary in excess of FS-1, in accordance with Appendix G of this chapter;

(5) A copy of the class justification or other appropriate explanation and support required by AIDAR 706.302-70, if applicable;

(6) Any deviation to the policy or procedures of this Appendix, processed and approved under AIDAR 701.470;

(7) The memorandum of negotiation;

(j) The position description is classified in accordance with the LEPCH, and the proposed salary is consistent with the local compensation plan or the alternate procedures established in 4(c)(2)(ii) above;

(k) Funds for the contract are properly obligated to preclude violation of the Anti-Deficiency Act, 31 U.S.C. 134 (the contracting officer ensures that the contract has been properly recorded by the appropriate accounting office prior to its release for the signature of the selected contractor);

(l) The contractor receives and understands Attachment 2C of Chapter 2, A.I.D. Handbook 24, *General Personnel Policy*, entitled "Employee Responsibilities and Conduct," and a copy is attached to each contract, as provided for in paragraph 2(c) of General Provision 2, Section 11;

(m) Agency conflict of interest requirements, as set out in Chapter 2D and 2F of A.I.D. Handbook 24, are met by the contractor prior to his/her reporting for duty;

(n) A copy of a Checklist for Personal Services Contractors which may be in the form set out above or another form convenient for the contracting officer, provided that a form containing all of the information described in this paragraph 7 shall be prepared for each PSC and placed in the contract file;

(o) In consultation with the regional legal advisor and/or the regional contracting officer, the contract is modified by deleting from the General Provisions (Sections 10, 11, 12, 13, 14, and 15 of this Appendix) the inapplicable clause(s) by a listing in the Schedule; and

(p) The block entitled, "Project No." on the Cover Page of the contract format is completed by inserting the four-segment project number as prescribed in A.I.D. Handbook 18, *Information Services.*

8. Contract Provisions

(a) The Contract Document.

The prescribed contract Cover Page, Contract Schedule, General Provisions and Additional General Provisions for personal service contracts for TCNs and CCNs covered by this Appendix are included as follows:

9. "Cover Page" for a Contract with a Cooperating Country National or with a Third Country National.

10. "Schedule for Contract With a Cooperating Country National."

11. "General Provisions for Contract With a Cooperating Country National."

12. "Schedule for Contract With a Third Country National".

13. "General Provisions for Contract with a Third Country National."

14. "Additional Provisions for Contract With a Third Country National."

15. FAR Clauses to be incorporated by reference in personal services contracts.

Section 9

AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C. 20523

CONTRACT WITH A COOPERATING COUNTRY NATIONAL FOR PERSONAL SERVICES ABROAD ☐
CONTRACT WITH A THIRD COUNTRY NATIONAL FOR PERSONAL SERVICES ABROAD ☐

Negotiated Pursuant to the Foreign Assistance Act of 1961, as Amended, and Executive Order 11223

Country of Performance

Contract For

Contracting Office (name and address

Administered By (if other than Contracting Office)

Cognizant Scientific/Technical Office (name, office symbol, address)

Supervising Officer:

This is a Consulting Services Contract (AIDAR 737.272)
☐ YES ☐ NO

Payment Will Be Made By

Contract Number

Amount Obligated

Total Estimated Contract Cost

Project Number

Contractor (name, street, city, state, postal zone)

Effective Date Estimated completion Date

Accounting and Appropriation Data

PIO/T Number ____________

Appropriation No. ____________

Budget Plan Code ____________

Type of Advance
("X" appropriate box)
☐ INITIAL ☐ NONE AUTHORIZED

The United States of America, hereinafter called the Government, represented by the Contracting Office executing this contract, and the Contractor agree that the Contractor shall perform all the services set forth in the attached Schedule, for the consideration stated therein. The rights and obligations of the parties to this contract shall be subject to and governed by the Schedule and the General Provisions. To the extent of any inconsistency between the Schedule or the General Provisions and any specifications or other provisions which are made a part of this contract, by reference or otherwise, the Schedule and the General Provisions shall control. To the extent of any inconsistency between the Schedule and the General Provisions, the Schedule shall control.

(Fill in appropriate spaces)

This Contract consists of this Cover Page, the Schedule of .... pages, including the Table of Contents, the General Provisions for a CCN (Section 11 dated ________), or the General Provisions for a TCN (Section 13 dated ________), the Additional General Provisions for a TCN (Section 14 dated ________), and Section 15 FAR Clauses dated ________.

Signature of Contractor

Typed or Printed Name

Date

UNITED STATES OF AMERICA
AGENCY FOR INTERNATIONAL
DEVELOPMENT

By (signature of Contracting Officer)

Typed or Printed Name

Date

Section 10

Cooperating Country National PSC
Contract No.________________

Table of Contents

The Schedule consists of this Table of Contents and the following Articles:

Article I—Statement of Duties
Article II—Period of Service
Article III—Contractor's Compensation and Reimbursement
Article IV—Costs Reimbursable and Logistic Support
Article V—Precontract Expenses
Article VI—Additional Clauses

General Provisions

The following provisions, numbered as shown below, omitting number(s) ______, are the General Provisions (GPs) of this Contract:

1. Definitions.
2. Compliance with Applicable Laws and Regulations.
3. Physical Fitness.
4. Security Clearance.
5. Workweek.
6. Leave and Holidays.
7. Social Security and Cooperating Country Taxes.
8. Worker's Compensation.
9. Travel and Transportation Expenses.
10. Payment.
11. No Access to Classified Information.
12. Contractor-Mission Relationships.
13. Termination.
14. Disputes.
15. Release of Information.
16. Officials Not To Benefit.
17. Covenant Against Contingent Fees.
18. Notices.

Schedule

NOTE: Use of the following Schedule articles is not mandatory. They are intended to serve as guidelines and as a checklist for contracting offices in drafting contract schedules. Article language shall be changed to suit the needs of the particular contract. Special attention should be given to the financial planning sections where unnecessary line items should be eliminated.

Article I—Statement of Duties

[The statement of duties shall include:

A. General statement of the purpose of the contract.

B. Statement of duties to be performed.

C. Orientation or training to be provided by USAID.]

Article II—Period of Service

Within ____ days after written notice from the Contracting Officer that all clearances, including the doctor's certificate required under General Provisions Clause 3, have been received or unless another date is specified by the Contracting Officer in writing, the contractor shall proceed to ______ and shall promptly commence performance of the duties specified above. The contractor's period of service shall be approximately ______ in ______. (Specify time of duties in each location.)

Article III—Contractor's Compensation and Reimbursement

A. Except as reimbursement may be specifically authorized by the Mission Director or Contracting Officer, AID shall pay the contractor compensation after it has accrued and make reimbursements, if any are due, in currency of the cooperating country (LC) in accordance with the prevailing practice of the post or for necessary and reasonable costs actually incurred in the performance of this contract within the categories listed in paragraph D, below, and subject to the conditions and limitations applicable thereto as set out herein and in the attached General Provisions (GP).

B. The amount budgeted and available as personal compensation to the contractor is calculated to cover a calendar period of approximately ____ (days) (weeks) (months) (years) (which is to include (1) vacation and sick leave which may be earned during the contractor's tour of duty (GP Clause No. 6), (2) ____ days for authorized travel (GP Clause 9), and (3) ____ days for orientation and consultation if required by the Statement of Duties.

C. The contractor shall earn vacation leave at the rate of ____ days per year under the contract (provided the contract is in force for at least 90 days) and shall earn sick leave at the rate of ____ days per year under the contract.

D. Allowable Costs:

1. Compensation at the rate of LC____ per (year) (month) (week) (day), equivalent to Grade FSN-____/____, in accordance with the Mission's Local Compensation Plan. If during the effective period of this contract the Local Compensation Plan is revised, contractor's compensation will be revised accordingly and contractor will be notified in writing by the Contracting Officer. Adjustments in compensation for periods when the contractor is not in compensable pay status shall be calculated as follows: Rate of LC____ per (day) (hour).

LC____

2. Overtime (Unless specifically authorized in the Schedule of this contract, no overtime hours shall be allowed hereunder.)

LC____

3. Travel and Transportation (Ref. GP Clause 9). (Includes the value of GTRs fur-

nished by the Government, not payable to Contractor).

a. United States	$____	
b. International	$____	
c. Cooperating and Third Country	$____	LC____
Subtotals Item 3	$____	LC____

4. Subsistence or Per Diem (Ref. GP Clause 9.)

a. United States	$____	
b. International	$____	
c. Cooperating and Third Country	$____	LC____
Subtotals Item 4	$____	LC____

5. Other Direct Costs.

a. Physical Examination (Ref. GP Clause 3)		LC____
b. Miscellaneous		LC____
Subtotal Item 5		LC____
Total Estimated Costs (Lines 1 thru 5)	$____	LC____

E. Maximum U.S. Dollar and Local Currency Obligation:

In no event shall the maximum U.S. dollar obligation under this contract exceed $______ nor shall the maximum local currency obligation exceed LC______. Contractor shall keep a close account of all obligations incurred and accrued hereunder and promptly notify the Contracting Officer whenever it appears that the said maximum is not sufficient to cover all compensation and costs reimbursable which are anticipated under the contract.

Article IV—Costs Reimbursable and Logistic Support

A. General

The contractor shall be provided with or reimbursed in local currency (________) for the following:

[Complete]

B. Method of Payment of Local Currency Costs

Those contract costs which are specified as local currency costs in paragraph A, above, if not furnished in kind by the cooperating government or the Mission, shall be paid to the contractor in a manner adapted to the local situation, based on vouchers submitted in accordance with General Provisions Clause 10. The documentation for such costs shall be on such forms and in such manner as the Mission Director shall prescribe.

C. Cooperating or U.S. Government Furnished Equipment and Facilities

[List any logistical support, equipment, and facilities to be provided by the cooperating government or the U.S. Government at no cost to this contract; e.g., office space, supplies, equipment, secretarial support, etc., and the conditions, if any, for use of such equipment.]

Article V—Precontract Expenses

No expense incurred before signing of this contract will be reimbursed unless such expense was incurred after receipt and acceptance of a precontract expense letter issued to the contractor by the Contracting Officer, and then only in accordance with the provisions and limitations contained in such letter. The rights and obligations created by such letter shall be considered as merged into this contract.

Article VI—Additional Clauses

[Additional Schedule clauses may be added, such as the implementation of General Provisions.]

Section 11. General Provisions—Contract With a Cooperating Country National for Personal Services

To be used to contract with cooperating country nationals for personal services to be performed in the cooperating country.

Index of Clauses

1. Definitions (Dec 1986).
2. Compliance with Applicable Laws and Regulations (Dec 1986).
3. Physical Fitness (Dec 1986).
4. Security Clearances (Dec 1986).
5. Workweek (Dec 1986).
6. Leave and Holidays (Dec 1986).
7. Social Security and Cooperating Country Taxes (Dec 1986).
8. Worker's Compensation (Dec 1986).
9. Travel and Transportation (Dec 1986).
10. Payment (Dec 1986).
11. No Access To Classified Information (Dec 1986).
12. Contractor-Mission Relationships (Dec 1986).
13. Termination (FAR 52.249-12) (APR 1984).
14. Disputes (APR 1984) [(FAR 52.233-1)(Alternate I)].
15. Release of Information (Dec 1986).
16. Officials Not to Benefit [(APR 1984) (FAR 52.203-5)].
17. Convenant Against Contingent Fees (Dec 1986).
18. Notices (Dec 1986).

1. Definitions (Dec 1986)

(a) "Administrator" shall mean the Administrator or the Deputy Administrator of the Agency for International Development.

(b) "AID" shall mean the Agency for International Development.

(c) "Contracting Officer" shall mean a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(d) "Contractor" shall mean the individual engaged to serve in the cooperating country under this Contract.

(e) "Cooperating Country" shall mean the foreign country in or for which services are to be rendered hereunder.

(f) "Cooperating Government" shall mean the government of the cooperating country.

(g) "Government" shall mean the United States Government.

(h) "Local currency" shall mean the currency of the cooperating country.

(i) "Mission" shall mean the United States AID Mission to, or principal AID office in, the Cooperating Country.

(j) "Mission Director" shall mean the principal officer in the Mission in the cooperating country, or his/her designated representative.

(k) "Tour of duty" shall mean the Contractor's period of service under this Contract and shall include authorized leave.

2. Compliance With Applicable Laws and Regulations (Dec 1986)

(a) Conformity to Laws and Regulations of the Cooperating Country. Contractor agrees, during the tour of duty under this contract, to abide by all applicable laws and regulations of the cooperating country and political subdivisions thereof.

(b) Code of Conduct.

The Contractor shall, during the tour of duty under this Contract, be considered an "employee" (or if his/her tour of duty is for less than 130 days, a "special Government employee") for the purposes of, and shall be subject to, the provisions of 22 CFR Part 10, "Employee Responsibilities and Conduct" Attachment 2C to Chapter 2 of AID Handbook 24. By accepting this Contract, the Contractor acknowledges receipt of a copy of said provisions.

3. Physical Fitness (October 1987)

The contractor shall be examined by a licensed doctor of medicine, and the contractor shall obtain from the doctor a certificate that, in the doctor's opinion, the contractor is physically qualified to engage in the type of activity for which he/she is to be employed under the contract. A copy of the certificate shall be provided to the contracting officer before the contractor starts work under the contract. The contractor shall be reimbursed for the cost of the physical examination based on the rates prevailing locally for such examinations in accordance with Mission practice.

4. Security Clearance (Dec 1986)

The Contractor recognizes that a security check including any record with police authorities, has been performed before the signing of this contract. The Contractor is obligated to notify immediately the Contracting Officer if the Contractor is arrested or charged with any offense during the term of this contract.

5. Workweek (October 1987)

The contractor workweek shall not be less than 40 hours, unless otherwise provided in the Schedule, and shall coincide with the workweek for those employees of the Mission or the cooperating country agency most closely associated with the work of this contract. If approved in advance in writing, overtime worked by the contractor shall be paid in accordance with the procedures governing premium compensation applicable to direct hire foreign service national employees.

6. Leave and Holidays (October 1987)

(a) Vacation Leave.

The contractor may accrue, accumulate, use and be paid for vacation leave in the same manner as such leave is accrued, accumulated, used and paid to foreign service national direct hire employees of the Mission. No vacation leave shall be earned if the contract is for less than 90 days. Unused vacation leave may be carried over under an extension or renewal of the contract as long as it conforms to Mission policy and practice.

(b) Sick Leave.

The contractor may accrue, accumulate, and use sick leave in the same manner as such leave is accrued, accumulated and used by foreign service national direct hire employees of the Mission. Unused sick leave may be carried over under an extension of the contract. The contractor will not be paid for sick leave earned but unused at the completion of this contract.

(c) Leave Without Pay.

Leave without pay may be granted only with the written approval of the contracting officer or Mission Director.

(d) Holidays.

The contractor shall be entitled to all holidays granted by the Mission to direct hire cooperating country national employees who are on comparable assignments.

7. *Social Security and Cooperating Country Taxes* (Dec 1986)

Funds for Social Security, retirement, pension, vacation or other cooperating country programs as required by local law may be deducted and withheld in accordance with laws and regulations and rulings of the cooperating country or any agreement concerning such withholding entered into between the cooperating government and the United States Government.

8. *Worker's Compensation Benefits* (Dec 1986)

The Contractor shall be provided worker's compensation benefits in accordance with the Federal Employees' Compensation Act.

9. *Travel and Transportation* (Dec 1986)

(a) The Contractor shall be reimbursed in currency consistent with the prevailing practice at post and at the rates established by the Mission Director for authorized travel in the cooperating country in connection with duties directly referable to work under this Contract. In the absence of such established rates, the Contractor shall be reimbursed for actual costs of authorized travel in the cooperating country if not provided by the cooperating government or the Mission in connection with duties directly referable to work hereunder, including travel allowances at rates prescribed by AID Handbook 22, as from time to time amended.

(b) Special International Travel and Third-Country Travel.

For special travel which (1) advances the purpose of the Contract, (2) is not otherwise provided by the cooperating government, and (3) has the prior written approval of the Contracting Officer or the Mission Director, the Contractor shall travel under Government Travel Requests, or if appropriate, be reimbursed for (i) the costs of international transportation and for local transportation within other countries, and (ii) travel allowances while in official travel status and while performing services under the Contract in such other countries at rates prescribed by AID Handbook 22, as from time to time amended.

(c) Preference for U.S.-Flag Air Carriers (April 1984).

(1) "International air transportation," as used in this clause, means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States," as used in this clause, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

"U.S.-flag air carrier," as used in this clause, means an air carrier holding a certificate under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371).

(2) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517) (Fly America Act) requires all Federal agencies and Government contractors and subcontractors use U.S.-flag carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(3) The Contractor agrees, in performing work under this contract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.

(4) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a certification on vouchers involving such transportation essentially as follows:

Certification of the Unavailability of U.S.-Flag Air Carriers

I hereby certify that international air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation): [State reasons]:

____

(End of Certification)

(d) Indirect Travel for Personal Convenience.

(1) When travel is performed by an indirect route for the personal convenience of the traveler, the allowable costs of such travel will be computed on the basis of the cost of economy class air fare via the direct usually traveled route between the authorized points of departure and destination.

(2) If such costs include fares for air or ocean transportation by foreign-flag carriers, approval for indirect travel by such foreign-flag carrier must be obtained from the Contracting Officer or the Mission Director before such travel is undertaken, otherwise only that portion of travel accomplished by U.S.-flag carriers will be reimbursable within the above limitation of allowable costs.

(e) Delays En Route.

The Contractor may be granted reasonable delays en route, provided that such delays are caused by events beyond the control of the Contractor and are not due to circuitous routing. It is understood that if the delay is caused by physical incapacitation the Contractor shall be eligible for sick leave, as provided for under the General Provision of this Contract entitled Leave and Holidays.

(f) Privately Owned Vehicle (POV).

If travel by POV is authorized in the Contract Schedule or approved by the Contracting Officer, the Contractor shall be reimbursed for the cost of travel in his/her privately owned vehicle in accordance with Mission practice and regulations.

10. Payment (October 1987)

(a) Payment of compensation shall be based on written documentation supporting time and attendance which may be (1) maintained by the Mission in the same way as for direct hire FSN's or (2) the contractor may submit such written documentation in a form acceptable to Mission policy and practice as required for other personal service contractors and as directed by the Mission Controller or paying office. The documentation will also provide information required to be filed under Cooperating Country laws to permit withholding by A.I.D. of funds, if required, as described in the clause of these General Provisions entitled Social Security and Cooperating Country Taxes.

(b) Any other payments due under this contract shall be as prescribed by Mission policy for the type of payment being made.

11. No Access to Classified Information (October 1987)

(a) The contractor shall not normally have access to classified or administratively controlled information and shall take conscious steps to avoid receiving or learning of such information. However, based on contractor's need to know, Mission may authorize access to administratively controlled information for performance of assigned scope of work on a case-by-case basis in accordance with A.I.D. Handbook 6.

(b) The Contractor agrees to submit immediately to the Mission Director or Contracting Officer a complete detailed report, marked "Privileged Information", of any information which the Contractor may have concerning existing or threatened espionage, sabotage, or subversive activity against the United States of America or the USAID Mission or the Cooperating Country Government.

12. Contractor-Mission Relationships (Dec 1986)

(a) The Contractor acknowledges that this Contract is an important part of the U.S. Foreign Assistance Program and agrees that his/her duties will be carried out in such a manner as to be fully commensurate with the responsibilities which this entails. Favorable relations between the Mission and the Cooperating Government as well as with the people of the cooperating country require that the Contractor shall show respect for the conventions, customs, and institutions of the cooperating country and not become involved in any illegal political activities.

(b) If the Contractor's conduct is not in accordance with paragraph (a), the Contract may be terminated pursuant to the General Provision of this contract, entitled "Termination."

(c) The Mission Director is the chief representative of AID in the cooperating country. In this capacity, he/she is responsible for the total AID Program in the cooperating country including certain administrative responsibilities set forth in this Contract and for advising AID regarding the performance of the work under the Contract and its effect on the U.S. Foreign Assistance Program. The Contractor will be responsible for performing his/her duties in accordance with the statement of duties called for by the Contract. However, he/she shall be under the general policy guidance of the Mission Director and shall keep the Mission Director or his/her designated representative currently informed of the progress of the work under this Contract.

13. Termination (Apr 1984) [FAR 52.249-12]

The Government may terminate this contract at any time upon at least 15 days' written notice by the Contracting Officer to the Contractor. The Contractor, with the written consent of the Contracting Officer, may terminate this contract upon at least 15 days' written notice to the Contracting Officer.

14. Disputes (Apr 1984) [FAR 52.233-1 (Alternate I)]

(This clause is drawn directly from the FAR. We recognize that paragraphs (3)(ii) (A) and (B) are not applicable to personal services contracts.)

(a) This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to his/her contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding $50,000 is not a claim under the Act until certified as required by subparagraph (d)(2) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) For Contractor claims exceeding $50,000, the Contractor shall submit with the claim a certification that:

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and

(iii) The amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

(3)(i) If the Contractor is an individual, the certification shall be executed by that individual.

(ii) If the Contractor is not an individual, the certification shall be executed by:

(A) A senior company official in charge at the Contractor's plant or location involved; or

(B) An officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(e) For Contractor claims of $50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over $50,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(h) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the Contract, and comply with any decision of the Contracting Officer.

15. Release of Information (*Dec 1986*)

All rights in data and reports shall become the property of the U.S. Government. All information gathered under this Contract by the Contractor and all reports and recommendations hereunder shall be treated as privileged information by the Contractor and shall not, without the prior written approval of the Contracting Officer, be made available to any person, party, or government, other than AID, except as otherwise expressly provided in this Contract.

16. Officials Not to Benefit (*Dec 1986*)

No member of or delegate to the Congress of the United States or United States resident commissioner shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom.

17. Covenant Against Contingent Fees (*Apr 1984*) [*FAR 52.203-5*]

The Contractor warrants that no person or selling agency has been employed or retained to solicit or obtain this Contract upon an agreement or understanding for a contingent fee, except a bona fide employee/agency. For breach or violation of this warranty, AID shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

"Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

18. Notices (Dec 1986)

Any notice, given by any of the parties hereunder, shall be sufficient only if in writing and delivered in person or sent by telegraph, telegram, registered, or regular mail as follows:

To AID: To the Mission Director of the mission in the Cooperating Country with a copy to the appropriate Contracting Officer.

To the Contractor:

At his/her post of duty while in the Cooperating Country and at the Contractor's address shown on the Cover Page of this Contract or to such other address as either of such parties shall designate by notice given as herein required.

Notices hereunder shall be effective when delivered in accordance with this clause or on the effective date of the notice, whichever is later.

Section 12

Third Country National PSC

Contract No.——————————

Table of Contents

The Schedule consists of this Table of Contents and the following Articles:

Article I—Statement of Duties
Article II—Period of Service
Article III—Contractor's Compensation and Reimbursement
Article IV—Costs Reimbursable and Logistic Support
Article V—Precontract Expenses
Article VI—Additional Clauses

General Provisions

The following provisions, numbered as shown below, omitting number(s) ______, are the General Provisions (GPs) of this Contract:

1. Definitions.
2. Compliance with Applicable Laws and Regulations.
3. Physical Fitness.
4. Security Clearance.
5. Workweek.
6. Leave and Holidays.
7. Allowances.
8. Social Security and Cooperating Country Taxes.
9. Advance of Dollar Funds.
10. Insurance.
11. Travel and Transportation Expenses.
12. Payment.
13. Conversion of U.S. Dollars to Local Currency.
14. Post of Assignment Privileges.
15. No Access to Classified Information.
16. Contractor-Mission Relationships.
17. Termination.
18. Disputes.
19. Release of Information.
20. Officials Not to Benefit.
21. Covenant Against Contingent Fees.
22. Notices.

Schedule

[NOTE: Use of the following Schedule articles is not mandatory. They are intended to serve as *guidelines and as a checklist* for contracting offices in drafting contract schedules. Article language shall be changed to suit the needs of the particular contract. Special attention should be give to the financial planning sections where unnecessary line items should be eliminated.]

Article I—Statement of Duties

[The statement of duties shall include:

A. General statement of the purpose of the contract.

B. Statement of duties to be performed.

C. Identification of the Supervising Officer (by name or title).

D. Orientation or training to be provided by USAID.]

Article II—Period of Service

Within ______ days after written notice from the Contracting Officer that all clearances, including the doctor's certificate required under General Provisions Clause 3, have been received or unless another date is specified by the Contracting Officer in writing, the contractor shall proceed to ______ where he/she shall promptly commence performance of the duties specified above. The contractor's period of service shall be approximately ______ in ______. (Specify time of duties in each location.)

Article III—Contractor's Compensation and Reimbursement

A. Except as U.S. Dollar reimbursement may be specifically authorized by the General Provisions or by the Mission Director or Contracting Officer, AID shall pay the contractor compensation after it has accrued and reimburse him/her in currency consistent with the prevailing practice at post for necessary and reasonable costs actually incurred by him/her in the performance of this contract within the categories listed in paragraph C, below, and subject to the conditions and limitations applicable there to as set out herein and in the attached General Provisions (GP) (or Additional General Provisions (AGP) if applicable).

B. The amount budgeted and available as personal compensation to the contractor is calculated to cover a calendar period of approximately ____ (days) (weeks) (months) (years) (which is to include (1) vacation and sick leave which may be earned during the contractor's tour of duty (GP Clause No. 6, AGP Clause No. 4), (2) ____ days for authorized travel (GP Clause 11(b), AGP Clause No. 6), and (3) ____ days for orientation and consultation if required by the Statement of Duties.

C. The contractor shall earn vacation leave at the rate of ____ per year under the contract (provided the contract is in force for at least 90 days) and shall earn sick leave at the rate of ____ per year under the contract.

D. Allowable Costs:

1. Compensation at the rate of LC ____ per (year) (month) (week) (day), equivalent to grade FSN-___/___, in accordance with the Mission's Local Compensation Plan. If during the effective period of this contract the Local Compensation Plan is revised, contractor's compensation will be revised accordingly and contractor will be notified in writing by the Contracting Officer. Adjustments in compensation for periods when the contractor is not in compensable pay status shall be calculated as follows: Rate of LC ____ per (day) (hour).

LC ____________________

2. Overtime (Unless specifically authorized in the Schedule of this contract, no overtime hours shall be allowed hereunder.)

LC ____________________

3. Allowances in Cooperating Country (Ref. GP Clause 7 and AGP Clause 5.)

LC ____________________

4. Travel and Transportation (Ref. GP Clause 11 and AGP Clause 6.) (Includes the value of GTRs furnished by the Government, not payable to Contractor).

a. United States	$___	
b. International	$___	
c. Cooperating and Third Country	$___	LC___
Subtotals Item 4	$___	LC___

5. Subsistence or Per Diem (Ref. GP Clause 11 and AGP Clause 6.)

a. United States	$___	
b. International	$___	
c. Cooperating and Third Country	$___	LC___
Subtotals Item 5	$___	LC___

6. Other Direct Costs.

a. Precontract Costs, passport, visa, inoculations, etc. (Ref. GP Clause 3 and AGP Clause 3)	$___	
b. Physical Examination (Ref. GP Clause 3 and AGP Clause 3.)	$___	
c. Communications, Miscellaneous	$___	
Subtotal Item 6	$___	
Total Estimated Costs (Lines 1 thru 6)	$___	LC___

E. Maximum U.S. Dollar and Local Currency Obligation:

In no event shall the maximum U.S. dollar obligation under this contract exceed $______ nor shall the maximum local currency obligation exceed LC______. Contractor shall keep a close account of all obligations he/she incurs and accrues hereunder and promptly notify the Contracting Officer whenever in his/her opinion the said maximum is not sufficient to cover all compensation and costs reimbursable which he/she anticipates under the contract.

Article IV—Costs Reimbursable and Logistic Support

A. General:

The contractor shall be provided with or reimbursed in local currency (______) for the following:

[Complete]

B. Method of Payment of Local Currency Costs:

Those contract costs which are specified as local currency costs in paragraph A, above, if not furnished in kind by the cooperating government or the Mission, shall be paid to the contractor in a manner adapted to the local situation, based on vouchers submitted in accordance with General Provisions Clause 10. The documentation for such costs shall be on such forms and in such manner as the Mission Director shall prescribe.

C. Cooperating or U.S. Government Furnished Equipment and Facilities.

[List any logistical support, equipment, and facilities to be provided by the cooperating government or the U.S. Government at no cost to this contract; e.g., office space, supplies, equipment, secretarial support, etc., and the conditions, if any, for use of such equipment.]

Article V—Precontract Expenses

No expense incurred before execution of this contract will be reimbursed unless such expense was incurred after receipt and acceptance of a precontract expense letter issued to the contractor by the Contracting Officer, and then only in accordance with the provisions and limitations contained in such letter. The rights and obligations created by such letter shall be considered as merged ito this contract.

Article VI—Additional Clauses

[Additional Schedule clauses may be added, such as the implementation of General Provisions or Additional General Provisions clauses.]

Section 13. General Provisions—Contract With a Third Country National for Personal Services

To be used on tours of duty of less than 1 year. For tours of duty of 1 year or more these "General Provisions" will be supplemented by "Additional General Provisions" (see Section 14).

Index of Clauses

1. Definitions.
2. Compliance with Applicable Laws and Regulations.
3. Physical Fitness.
4. Security Clearance.
5. Workweek.
6. Leave and Holidays.
7. Allowances.
8. Social Security and Cooperating Country Taxes.
9. Advance of Dollar Funds.
10. Insurance.
11. Travel and Transportation Expenses.
12. Payment.
13. Conversion of U.S. Dollars to Local Currency.
14. Post of Assignment Privileges.
15. No Access to Classified Information.
16. Contractor-Mission Relationships.
17. Termination.
18. Disputes.
19. Release of Information.
20. Officials Not to Benefit.
21. Covenant Against Contingent Fees.
22. Notices.

1. Definitions (Dec 1986)

(a) "Administrator" means the Administrator or the Deputy Administrator of the Agency for International Development.

(b) "AID" means the Agency for International Development.

(c) "Contracting Officer" means the person executing this Contract on behalf of the U.S. Government, or a properly designated successor to the Contracting Officer; and the term includes, except as otherwise provided in this Contract, the authorized representative of a Contracting Officer acting within authorized limits.

(d) "Contractor" means the individual engaged to serve in the cooperating country under this Contract.

(e) "Cooperating country" means the foreign country in or for which services are to be rendered hereunder.

(f) "Cooperating government" means the government of the cooperating country.

(g) "Economy class" air travel (also known as jet-economy, air coach, tourist-class, etc.) means a class of air travel which is less than business or first class.

(h) "Government" means the United States Government.

(i) "Local currency" means the currency of the cooperating country.

(j) "Mission" means the United States AID Mission to, or principal AID office in, the cooperating country.

(k) "Mission Director" means the principal officer in the Mission in the cooperating country, or that person's officially-designated deputy.

(l) "Tour of duty" means the Contractor's period of service under this Contract and shall include authorized leave and international travel.

(m) "Traveler" means the Contractor in authorized travel status.

(n) "Supervising Officer" means the AID official to whom the Contractor reports, and who is responsible for monitoring the Contractor's performance.

2. Compliance With Applicable Laws and Regulations (Dec 1986)

(a) Conformity to Laws and Regulations of the Cooperating Country.

Contractor agrees, during the tour of duty under this contract, to abide by all applicable laws and regulations of the cooperating country and political subdivisions thereof.

(b) Purchase or Sale of Personal Property or Automobiles.

To the extent permitted by the cooperating country, the purchase, sale, import, or export of personal property or automobiles in the cooperating country by the Contractor shall be subject to the same limitations and prohibitions which apply to Mission U.S.-citizen direct-hire employees.

(c) Code of Conduct.

The Contractor shall, during the tour of duty under this Contract, be considered an "employee" (or if the tour of duty is for less than 130 days, a "special Government employee") for the purposes of, and shall be subject to, the provisions of AID Handbook 24, Chapter 2. By accepting this contract, the Contractor acknowledges receipt of a copy of said provisions.

3. Physical Fitness (October 1987)

The contractor shall be examined by a licensed doctor of medicine, and the contractor shall obtain from the doctor a certificate that, in the doctor's opinion, the contractor is physically qualified to engage in the type of activity for which he/she is to be employed under the contract. A copy of the certificate shall be provided to the contracting officer before the contractor starts work under the contract. The contractor shall be reimbursed for the cost of the physical examination based on the rates prevailing locally for such examinations in accordance with Mission practice, or not to exceed $100 if not done locally.

4. Security Clearance (Dec 1986)

The Contractor recognizes that a security check including any record with police authorities has been performed before the signing of this contract. The Contractor is obligated to notify immediately the contracting office if the Contractor is arrested or charged with any offense during the term of this contract.

5. Workweek (Dec 1986)

The Contractor's workweek shall not be less than 40 hours, unless otherwise provided in the Schedule, and shall coincide with the workweek for those employees of the Mission or the cooperating country agency most closely associated with the work of this Contract. If the Contract is for less than full time (40 hours weekly), the leave earned shall be prorated.

6. Leave and Holidays (October 1987)

(a) Vacation Leave.

The contractor may accrue, accumulate, use and be paid for vacation leave in the same manner as such leave is accrued, accumulated, used and paid to foreign service national direct hire employees of the Mission but no vacation leave shall be earned if the contract is for less than 90 days. Unused vacation leave may be carried over under an extension or renewal of the contract as long as it conforms to Mission policy and practice.

(b) Sick Leave.

The contractor may accrue, accumulate, and use sick leave in the same manner as such leave is accumulated and used by foreign service national direct hire employees of the Mission. Unused sick leave may be carried over under an extension of the contract. The contractor will not be paid for sick leave earned but unused at the completion of this contract.

(c) Holidays.

The contractor shall be entitled to all holidays granted by the Mission to direct hire cooperating country national employees who are on comparable assignments.

7. Allowances (Dec 1986)

Allowances will be granted to the Contractor on the same basis as to direct-hire TCN employees at the post under the Post Compensation Plan. The allowances provided shall be paid to the Contractor in the currency of the cooperating country or in accordance with the practice prevailing at the Mission.

8. Social Security and Cooperating Country Taxes (Dec 1986)

Funds for Social Security, retirement, pension, vacation or other cooperating country programs as required by local law may be deducted and withheld in accordance with laws and regulations of the cooperating country or any agreement concerning such withholding entered into between the cooperating government and the United States government.

9. Advance of Dollar Funds (Dec 1986)

If requested by the Contractor and authorized in writing by the Contracting Officer, AID will arrange for an advance of funds to defray the initial cost of travel, travel allowances, authorized precontract expenses, and shipment of personal property. The advance shall be granted on the same basis as to an AID U.S.-citizen direct-hire employee in accordance with AID Handbook 22, Chapter 4.

10. Insurance (Dec 1986)

(a) Worker's Compensation Benefits.

The Contractor shall be provided worker's compensation benefits under the Federal Employees Compensation Act.

(b) Health and Life Insurance.

The Contractor shall be provided personal health and life insurance benefits on the same basis as they are granted to direct-hire TCN employees at the post under the Post Compensation Plan.

(c) Insurance on Private Automobiles—Contractor Responsibility.

If the Contractor or dependents transport, or cause to be transported, any privately owned automobile(s) to the cooperating country, or any of them purchase an automobile within the cooperating country, the Contractor agrees to insure that all such automobile(s) during such ownership within the cooperating country will be covered by a paid-up insurance policy issued by a reliable company providing the following minimum coverages, or such other minimum coverages as may be set by the Mission Director, payable in U.S. dollars or its equivalent in the currency of the cooperating country: injury to persons, $10,000/ $20,000; property damage, $5,000. The Contractor further agrees to deliver, or cause to be delivered, to the Mission Director, the insurance policies required by this clause or satisfactory proof of the existence thereof, before such automobile(s) is operated within the cooperating country. The premium costs for such insurance shall not be a reimbursable cost under this Contract.

(d) Claims for Private Personal Property Losses. The Contractor shall be reimbursed for private personal property losses in accordance with AID Handbook 23, "Overseas Support", Chapter 10.

11. Travel and Transportation Expenses (October 1987)

(a) General.

The executive or administrative officer at the Mission may furnish Transportation Requests (TR's) for transportation authorized by this contract which is payable in local currency or is to originate outside the United States. When transportation is not provided by Government issued TR, the Contractor shall procure the transportation and the costs will be reimbursed in accordance with the following:

(b) Travel and Transportation.

(1) Notwithstanding other provisions of this Clause 11, a TCN must return to the country of recruitment or to the TCN's home country within 30 days after termination or completion of employment or will forfeit all right to reimbursement for repatriation travel. The return travel obligation (repatriation travel) assumed by the U.S. Government may have been the obligation of another employer in the area of assignment if the employee has been in substantially continuous employment which provided for the TCN's return to home country or country from which recruited.

(2) Country of Recruitment Travel and Transportation.

The Contractor shall be reimbursed for actual transportation costs and travel allowances in the country of recruitment as authorized in the Schedule or approved in advance by the Contracting Officer or the Mission Director. Transportation costs and travel allowances shall not be reimbursed in any amount greater than the cost of, and time required for, economy-class commercial-scheduled air travel by the most expeditious route except as otherwise provided in paragraph (b)(6) below, unless economy air travel is not available and the Contractor certifies to this in the voucher or other documents submitted for reimbursement.

(3) International Travel.

(i) The Contractor shall be reimbursed for actual transportation costs and travel allowances from place of residence in the country of recruitment (or other location, provided that the cost of such travel does not exceed the cost of travel from the place of residence), to post of duty in the cooperating country and return to place of residence in the country of recruitment (or other location, provided that the cost of such travel does not exceed the cost of travel from the post of duty to the place of residence) upon completion of the contract. Such transportation costs shall not be reimbursed in an amount greater than economy-class commercial-scheduled air travel by the most expeditious route, except as otherwise provided in paragraph (b)(6) below and unless economy air travel is not available and the Contractor certifies to the facts in the voucher or other documents submitted for reimbursement. When travel to or from the cooperating country is by economy-class accommodations, the Contractor will be reimbursed for the costs of transporting up to 22 pounds gross weight of accompanied personal baggage in addition to that regularly allowed with the economy ticket, provided that the total number of pounds of baggage does not exceed that regularly allowed for first-class travelers. Travel allowances shall be at the rate of $6 per day for not more than the travel time required by scheduled economy-class commercial air carrier using the most expeditious route and computed in accordance with AID Handbook 22, as from time to time amended. One stopover of 24 hours is allowable when the Contractor uses economy-class accommodations for a trip of 14 hours or more of scheduled duration. Such stopover shall not be authorized when travel is by indirect route for the convenience of the Contractor. Per diem during authorized stopover shall be paid in accordance with AID Handbook 22, as from time to time amended.

(ii) Unaccompanied Baggage.

Except as provided in the Schedule or approved by the Contracting Officer, the Contractor who is on a tour of duty of 90 days or more under this Contract shall be reimbursed for the cost of unaccompanied personal effects not to exceed 400 pounds gross weight, 100 pounds gross weight of which may be shipped via airfreight and the balance by surface carrier from place of residence in the country of recruitment (or other location, provided that the cost of such shipment does not exceed the cost of shipment from the place of residence) to post of duty in the cooperating country and return to place of residence in the country of recruitment (or other location, provided that the cost of such shipment does not exceed the cost of shipment from the post of duty to the place of residence) upon completion of the contract.

(iii) Local Travel.

The Contractor shall be reimbursed at the rates established by the Mission Director for authorized travel in the cooperating country in connection with duties directly referable to work under this Contract. In the absence of such established rates, the Contractor shall be reimbursed in currency consistent with the prevailing practice at post for actual costs of authorized travel in the cooperating country if not provided by the cooperating government or the Mission in connection with duties directly referable to work hereunder, including travel allowances at rates prescribed by AID Handbook 22, as from time to time amended.

(iv) Special International Travel and Third-Country Travel.

For special travel which (1) advances the purpose of the Contract, (2) is not otherwise provided by the cooperating government, and (3) has the prior written approval of the Contracting Officer or the Mission Director, the Contractor shall travel under Government Travel Requests, or, if appropriate, be reimbursed for (i) the costs of international transportation and for local transportation within other countries, and (ii) travel allowances while in official travel status and while performing services under the Contract in such other countries at rates prescribed by AID Handbook 22, as from time to time amended.

(v) Indirect Travel for Personal Convenience.

(1) When travel is performed by an indirect route for the personal convenience of the traveler, the allowable costs of such travel will be computed on the basis of the cost of economy class air fare via the direct usually traveled route between the authorized points of departure and destination.

(2) If such costs include fares for air or ocean transportation by foreign-flag carriers, approval for indirect travel by such foreign flag carrier pursuant to paragraph (ix)(1) below must be obtained from the Contracting Officer or the Mission Director before such travel is undertaken, otherwise only that portion of travel accomplished by U.S.-flag carriers will be reimbursable within the above limitation of allowable costs.

(vi) Delays En Route.

The Contractor may be granted reasonable delays en route in travel status, not circuitous in nature, which are caused by events beyond the control of the Contractor. It is understood that if the delay is caused by physical incapacitation the Contractor shall be eligible for such sick leave as is provided under GP Clause No. 6(b) of this Contract.

(vii) Privately Owned Vehicles (POV).

(1) If travel by POV is authorized in the Schedule or approved by the Contracting Officer, the Contractor shall be reimbursed for the cost of travel by privately owned vehicle at the rate per mile equal to the rate authorized a U.S. Government direct hire employee in equivalent circumstances, plus authorized per diem, if the vehicle is being driven in connection with (A) authorized duties under this Contract, or (B) en route to or from the cooperating country provided that the total cost of the mileage and the per diem to the Contractor shall not exceed the total constructive cost of fare and normal per diem by (*1*) surface common carrier or (*2*) less than first-class air, whichever is the lesser.

(2) Costs of the shipment of vehicle for Contract tours of duty of less than 1 year are not reimbursable under this Contract.

(viii) Emergency and Irregular Travel and Transportation.

Actual transportation costs and travel allowances while en route, as provided in this section, shall be reimbursed under the following conditions:

(1) Subject to the prior written approval of the Mission Director, the costs of going from post of duty in the cooperating country to another approved location for the Contractor when, because of reasons or conditions beyond the Contractor's control, the Contractor has not completed the required service in the cooperating country. The Mission Director may also authorize the return to the cooperating country of such Contractor.

(2) It is agreed that paragraph (viii)(1) above includes, but is not necessarily limited to, the following:

1. Need for medical care beyond that available within the areas to which the Contractor is assigned.

2. Serious effect on physical or mental health if residence is continued at assigned post of duty.

3. Serious illness, injury, or death of a member of the Contractor's immediate family.

4. Emergency evacuation, when ordered by the principal U.S. Diplomatic Officer in the cooperating country. Allowances at safe haven when authorized by the Mission Director shall be payable in accordance with established Government Regulations.

5. Preparation and return of the remains of a deceased Contractor.

(ix) Preference for U.S.-Flag Air Carriers (April 1984).

(1) "International air transportation," as used in this clause, means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States," as used in this clause, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

"U.S.-flag air carrier," as used in this clause, means an air carrier holding a certificate under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371).

(2) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517)(Fly America Act) requires all Federal agencies and Gov-

ernment contractors and subcontractors use U.S.-flag carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(3) The contractor agrees, in performing work under this contract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.

(4) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a certification on vouchers involving such transportation essentially as follows:

Certification of the Unavailability of U.S.-Flag Air Carriers

I hereby certify that international air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation):

[State reasons] ————————————

(End of certification)

12. Payment (October 1987)

(a) Payment of compensation shall be based on written documentation supporting time and attendance which may be (1) maintained by the Mission in the same way as for direct hire FSN's or (2) the contractor may submit such written documentation in a form acceptable to Mission policy and practice as required for other personal service contractors and as directed by the Mission Controller or paying office. The documentation will also provide information required to be filed under Cooperating Country laws to permit withholding by A.I.D. of funds, if required, as described in the clause of these General Provisions entitled Social Security and Cooperating Country Taxes.

(b) Any other payments due under this contract shall be prescribed by Mission policy for the type of payment being made.

13. Conversion of Currency (Dec 1986)

Upon arrival in the cooperating country, and from time to time as appropriate, the Contractor shall consult with the Mission Director or his/her authorized representative who shall provide, in writing, the polic the Contractor shall follow in the conversion of one currency to another currency This may include, but not be limited to, th conversion of said currency through th cognizant U.S. Disbursing Officer, or Mission Controller, as appropriate.

14. Post of Assignment Privileges (Dec 1986)

Privileges such as the use of APO, PX's, commissaries and officer's clubs are established at posts abroad pursuant to agreements between the U.S. and host governments. These facilities are intended for and usually limited to U.S. citizen members of the official U.S. mission including the Embassy, USAID, Peace Corps, U.S. Information Service and the Military. Normally, the agreements do not permit these facilities to be made available to non-U.S. citizens if they are under contract to the United States Government. However, in those cases where the facilities are open to TCN contractor personnel, they may be used.

15. No Access to Classified Information (October 1987)

(a) The contractor shall not normally have access to classified or administratively controlled information and shall take conscious steps to avoid receiving or learning of such information. However, based on contractor's need to know, Mission may authorize access to administratively controlled information for performance of assigned scope of work on a case-by-case basis in accordance with A.I.D. Handbook 6.

(b) The Contractor agrees to submit immediately to the Mission Director or Contracting Officer a complete detailed report, marked "Privileged Information", of any information which the Contractor may have concerning existing or threatened espionage, sabotage, or subversive activity against the United States of America or the USAID Mission or the Cooperating Country Government.

16. Contractor-Mission Relationships (Dec 1986)

(a) The Contractor acknowledges that this Contract is an important part of the U.S. Foreign Assistance Program and agrees that all duties will be carried out in such a manner as to be fully commensurate with the responsibilities which this entails.

(b) While in the cooperating country, the Contractor is expected to show respect for the conventions, customs, and institutions of the cooperating country and not interfere in its political affairs.

(c) If the Contractor's conduct is not in accordance with paragraph (b), the Contract may be terminated pursuant to the General Provision of this contract, entitled

Termination." The Contractor recognizes the right of the U.S. Ambassador to direct the contractor's immediate removal from any country when, in the discretion of the Ambassador, the interests of the United States so require. The contractor's failure to comply will result in forfeiture of the right of reimbursement for return travel.

(d) The Mission Director is the chief representative of AID in the cooperating country. In that capacity, the Director is responsible for the total AID Program in the cooperating country including certain administrative responsibilities set forth in this Contract and for advising AID regarding the performance of the work under the Contract and its effect on the U.S. Foreign Assistance Program. The Contractor will be responsible for performing all duties in accordance with the statement of duties called for by the Contract. However, the Contractor shall be under the general policy guidance of the Mission Director and shall keep the Mission Director currently informed of the progress of the work under the Contract.

17. Termination (Apr 1984) [FAR 52.249-12]

The Government may terminate this contract at any time upon at least 15 days' written notice by the Contracting Officer to the Contractor. The Contractor, with the written consent of the Contracting Officer, may terminate this contract upon at least 15 days' written notice to the Contracting Officer.

18. Disputes (Apr 1984) [FAR 52.233-1 (Alternate I)]

(This clause is drawn directly from the FAR. We recognize that paragraphs (3)(ii)(A) and (B) are not applicable to personal services contracts.)

(a) This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to his/her contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding $50,000 is not a claim under the Act until certified as required by subparagraph (d)(2) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) For Contractor claims exceeding $50,000, the Contractor shall submit with the claim a certification that:

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and

(iii) The amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

(3)(i) If the Contractor is an individual, the certification shall be executed by that individual.

(ii) If the Contractor is not an individual, the certification shall be executed by:

(A) A senior company official in charge at the Contractor's plant or location involved; or

(B) An officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(e) For Contractor claims of $50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over $50,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(h) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the Contract, and comply with any decision of the Contracting Officer.

19. Release of Information (Dec 1986)

All rights in data and reports shall become the property of the U.S. Government. All information gathered under this Contract by the Contractor and all reports and recommendations hereunder shall be treated as privileged information by the Contractor and shall not, without the prior written approval of the Contracting Officer, be made available to any person, party, or government, other than AID, except as otherwise expressly provided in this Contract.

20. Officials Not To Benefit (Dec 1986)

No member of or delegate to the Congress of the United States or United States resident commissioner shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom.

21. Covenant Against Contingent Fees (Apr 1984) [FAR 52.203-5]

The Contractor warrants that no person or selling agency has been employed or retained to solicit or obtain this Contract upon an agreement or understanding for a contingent fee, except a bona fide employee/agency. For breach or violation of this warranty, AID shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

"Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

22. Notices (Dec 1986)

Any notice, given by any of the parties hereunder, shall be sufficient only if in writing and delivered in person or sent by telegraph, telegram, registered, or regular mail as follows:

(a) Notice to AID:

To the Mission Director of the mission in the cooperating country with a copy to the appropriate Contracting Officer.

(b) Notice to the Contractor:

At his post of duty while in the cooperating country and at the Contractor's address shown on the Cover Page of this Contract.

Notice may also be given to such other address as either of such parties shall designate by notice given as herein required. Notices hereunder shall be effective in accordance with this clause or on the effective date of the notice, whichever is later.

Section 14. Additional General Provisions—Contract With a Third Country National for Personal Services

(To be used with Section 13—General Provisions when the tour of duty will be 1 year or more.)

Table of Contents

1. Definitions (long tour).
2. Compliance with Applicable Laws and Regulations (dependents).
3. Physical Fitness (long tour).
4. Vacation Leave (long tour).
5. Allowances (long tour).
6. Travel and Transportation Expenses (long tour).

1. Definitions (Long Tour) (Dec 1986)

(a) "Dependents" means:

(1) *Spouse*

(2) *Children* (including step and adopted children) who are unmarried and under 21 years of age or, regardless of age, are incapable of self-support.

(b) "Traveler" also means dependents of the Contractor who are in authorized travel status.

2. Compliance With Applicable Laws and Regulations (Long Tour) (Dec 1986) (Dependents)

(a) *Conformity to Laws and Regulations of the Cooperating Country.*

While in the cooperating country, the Contractor agrees to make every effort to assure that authorized dependents shall abide by all applicable laws and regulations of the cooperating country and political subdivisions thereof.

(b) ***Purchase, Sale, Import, or Export of Personal Property or Automobiles.***

To the extent permitted by the cooperating country, the purchase, sale, import, or export of personal property or automobiles by the Contractor's authorized dependents in the cooperating country shall also be subject to the limitations and prohibitions which apply to U.S. national direct-hire employee dependents.

3. Physical Fitness (October 1987)

(a) Predeparture.

The contractor's authorized dependents shall also be required to be examined by a licensed doctor of medicine. The contractor shall require the doctor to certify that in the doctor's opinion, the contractor's authorized dependents are physically qualified to reside in the cooperating country. A copy of the certificate shall be provided to the contracting officer prior to the dependent's departure for the cooperating country.

(b) End of Tour.

The contractor and his/her authorized dependents are authorized physical examinations within 60 days after completion of the contractor's tour of duty.

(c) Reimbursement.

The contractor shall be reimbursed for the cost of the physical examinations mentioned in paragraphs (a) and (b) above as follows: (1) Based on those rates prevailing locally for such examinations in accordance with Mission practice or (2) if not done locally, not to exceed $100 per examination for the contractor's dependents of 12 years of age and over and not to exceed $40 per examination for contractor's dependents under 12 years of age. The contractor shall also be reimbursed for the cost of all immunizations normally authorized and extended to FSN employees.

4. Vacation Leave (Long Tour) (Dec 1986)

With the approval of the Mission Director, and if the circumstances warrant, a Contractor may be granted advance vacation leave in excess of that earned but in no case shall a Contractor be granted advance vacation leave in excess of that which will be earned over the life of the Contract. The Contractor agrees to reimburse AID for leave used in excess of the amount earned during the Contractor's assignment under the Contract.

5. Allowances (Long Tour) (Dec 1986)

Allowances shall be granted to the Contractor and authorized dependents to the same extent, and on the same basis as, they are granted to direct-hire TCN employees and their dependents at the post under the Post Compensation Plan.

The allowances provided shall be paid to the Contractor in the currency of the cooperating country or in accordance with the practice prevailing at the Mission.

6. Travel and Transportation Expenses (Long Tour) (Dec 1986)

(a) *General.*

Pursuant to paragraph (a) of Clause 11 of the General Provisions, when transportation is not provided by Government-issued TR for the items listed below, the Contractor shall procure the transportation and the cost will be reimbursed in accordance with the following:

(1) *International Travel.*

(i) International travel costs and allowances and stopovers for authorized dependents shall be reimbursed on the same basis as for the Contractor under General Provision Clause No. 11(b)(2)(i) of this Contract except that travel allowances for such dependents shall be at the rate of $6 per day for persons 11 years of age or over and $3 per day for persons under 11 years of age payable for not more than the travel time required by scheduled economy class commercial air carrier using the most expeditious route and computed in accordance with AID Handbook 22, as from time to time amended.

(ii) 1. All international ocean transportation of things which is to be reimbursed in U.S. dollars as authorized under this Contract shall be by U.S.-flag vessels to the extent they are available. When U.S.-flag vessels are not available, or their use would result in a significant delay, the Contractor may request a release from this requirement from the M/SER/OP/TRANS, Transportation Support Division, Agency for International Development, Washington, DC 20523, giving the basis for the request.

2. All international air transportation of dependents shall be in accordance with paragraph (b)(ix) of Clause 11 of the General Provisions, entitled "Preference for U.S. Flag Air Carriers."

(b) *Limitation on Travel by Dependents.*

Travel costs and allowances will be allowed for authorized dependents of the Contractor and such costs shall be reimbursed for travel from place of abode in the country of recruitment to the assigned station in the cooperating country and return, only if the dependent remains in the cooperating country for at least 9 months or one-half of the required tour of duty of the Contractor, whichever is greater, except as otherwise authorized hereunder for education, medical, or emergency visitation travel.

Dependents of the Contractor must return to the country of recruitment or home country within thirty days of the termination or completion of the Contractor's employment, otherwise such travel will not be reimbursed under this contract.

(c) *Delays En Route.*

Dependents may be granted reasonable delays en route, not circuitous in nature, while in travel status, caused by events beyond the control of such dependents.

(d) *Travel by Privately Owned Vehicle (POV).* Notwithstanding the provisions of paragraph (b)(vii) of Clause 11 of the General Provisions, if travel by POV is authorized in the Schedule or approved by the Contracting Officer, the Contractor shall be reimbursed for the cost of travel by privately owned vehicle at the rate per mile equal to the rate authorized a U.S. Government employee in equivalent circumstances, plus authorized per diem for the Contractor and for each of the authorized dependents traveling in the vehicle if the vehicle is being driven in connection with (1) authorized duties under this Contract or (2) en route to or from the cooperating country as authorized in the Schedule; provided that the total cost of the mileage and the per diem paid to all authorized travelers shall not exceed the total constructive cost of fare and normal per diem by all authorized travelers by (i) surface common carrier or (ii) less-than-first-class air, whichever is the lesser.

(e) *Emergency and Irregular Travel and Transportation.*

Notwithstanding the provisions of paragraph (b)(8) of Clause 11 of the General Provisions, actual transportation costs and travel allowances while en route, as provided in this section, will also be reimbursed under the following conditions:

(1) Subject to the prior written approval of the Mission Director, the costs of going from post of duty in the cooperating country to another approved location for the Contractor and authorized dependents, when because of reasons or conditions beyond his/her control, the Contractor has not completed the required service in the cooperating country or the dependent must leave the cooperating country. The Mission Director may also authorize the return to the cooperating country of such Contractor and/or authorized dependents.

(2) It is agreed that paragraph (e)(1) above, includes but is not necessarily limited to the following:

(i) Need for medical care beyond that available within the area to which Contractor is assigned.

(ii) Serious effect on physical or mental health if residence is continued at assigned post of duty.

(iii) Serious illness, injury, or death of a member of a Contractor's immediate family or the immediate family of a dependent.

(iv) Emergency evacuation, when ordered by the principal U.S. Diplomatic Officer in the cooperating country. Transportation and travel allowances at safe haven and the transportation of household effects and automobile or storage thereof when authorized by the Mission Director shall be payable in accordance with established Government regulations.

(v) Preparation and return of the remain of a deceased Contractor or dependents.

(f) *Transportation of Personal Effects* (e *cluding Automobiles) and Household Goods*

(1) *General.*

Transportation, including packing and crating costs, will be paid for shipment from Contractor's residence in the country of recruitment or other location (provided that the cost of transportation does not exceed the cost from the Contractor's residence) to post of duty in the cooperating country and return to the country of recruitment or other location (provided that the cost of transportation does not exceed the cost to the Contractor's residence), (i) of personal effects of the Contractor, and (ii) of household goods of Contractor not to exceed the following limitations.

	Basic household furniture not supplied (pounds net weight)	Basic househol furniture supplied (pounds ne weight
Contractor with dependents in cooperating country	18,000	7,00
Contractor without dependents in cooperating country	18,000	7,00

NOTE: For the purpose of this Clause, "net weight" and "gross weight" are defined and determined in accordance with the provisions of Section 162.1 of the Uniform State/AID/USIA Foreign Service Travel Regulations.

The cost of transporting household goods shall not exceed the cost of packing, crating, and transportation by surface common carrier.

(2) *Unaccompanied Baggage.*

The contractor will be reimbursed for costs of shipment of unaccompanied baggage (in addition to the weight allowance above for household effects) not to exceed the following:

	Gross weigh (pounds)
Employee	250
First dependent traveling	200
Second dependent traveling	150
Each additional dependent traveling	100

This unaccompanied baggage may be shipped as air freight by the most direct route between authorized points of origin and destination regardless of the modes of travel used.

Unaccompanied baggage is considered to be those personal belongings needed by the traveler immediately upon arrival at destination.

If the Contractor ships no household effects, the Contractor may ship not in excess of 400 pounds (gross weight) of personal effects for self and 300 pounds (gross weight) for each dependent. One hundred pounds (gross weight) of each traveler's allowance may be transported by airfreight; the balance is transported by surface carrier, if the cost is less than air shipment.

(3) *Reduced Rates on U.S.-Flag Carriers.*

Reduced rates on U.S.-flag carriers are in effect for shipments of household goods and personal effects of AID Contractors between certain locations. These reduced rates are available provided the shipper furnishes to the carrier at the time of the issuance of the Pill of Lading documentary evidence that the shipment is for the account of AID. The Contracting Officer will, on request, furnish to the Contractor current information concerning the availability of a reduced rate with respect to any proposed shipment. The Contractor will not be reimbursed for shipments of household goods or personal effects in amounts in excess of the reduced rates which are available in accordance with the foregoing.

(g) *Storage of Household Effects.*

The cost of storage charges (including packing, crating, and drayage costs) in the country of recruitment of household goods of Contractor will be permitted, in lieu of transportation of all or any part of such goods to the cooperating country under paragraph (f) above, provided that (1) the total amount of household goods shipped to the cooperating country and stored in the country of recruitment shall not exceed 18,000 pounds net for each Contractor employee regardless of family status, and (2) at least 200 pounds net of household effects will be stored; quantities of less than 200 pounds net stored will not be reimbursed.

(h) *Rest and Recuperation Travel.*

If approved in writing by the Mission Director, the Contractor and dependents shall be allowed rest and recuperation travel on the same basis as direct-hire TCN employees and their dependents at the post under the Local Compensation Plan.

Section 15. FAR Clauses

The following FAR clauses are to be used along with the General Provisions (Paragraph 11), and when appropriate, the Additional General Provisions (Paragraph 14), and shall be incorporated in each personal service contract by reference.

1. Inspection 52.246-5.
2. Examination of Records by Comptroller General 52.215-1.
3. Audit-Negotiation 52.215-2.
4. Privacy Act Notification 52.224-1.
5. Privacy Act 52.224-2.
6. Taxes-Foreign Cost Reimbursement Contracts 52.229-8.
7. Interest 52.232-17.
8. Assignment of Claims 52.232-23.
9. Protection of Government Buildings, Equipment, and Vegetation 52.237-2.
10. Notice of Intent to Disallow Costs 52.242-1.
11. Limitation of Cost 52.232-20.
12. Limitation of Funds 52.232-22.
13. Limitation of Liability-Services 52.246-25.
14. Anti-Kickback Procedures 52.203-7.

[52 FR 2354, Jan. 21, 1987, as amended at 52 FR 11075, Apr. 7, 1987; 52 FR 38100, Oct. 14, 1987; 53 FR 50633, Dec. 16, 1988]

CHAPTER 8—DEPARTMENT OF VETERANS AFFAIRS

EDITORIAL NOTE: Nomenclature changes affecting Chapter 8 appear at 54 FR 062, Sept. 29, 1989.

SUBCHAPTER A—GENERAL

art — Page

01 Veterans Affairs Acquisition Regulation System.... 157

02 Definitions of words and terms.... 174

03 Improper business practices and personal conflicts of interest.... 174

04 Administrative matters.... 174

SUBCHAPTER B—ACQUISITION PLANNING

05 Publicizing contract actions.... 179

06 Competition requirements.... 180

07 Acquisition planning.... 183

08 Required sources of supplies and services.... 185

09 Contractor qualifications.... 187

10 Specifications, standards and purchase order descriptions.... 192

12 Contract delivery or performance.... 197

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

13 Small purchase and other simplified purchase procedures.... 199

14 Sealed bidding.... 200

15 Contracting by negotiation.... 206

16 Types of contracts.... 210

17 Special contracting methods.... 212

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

19 Small business and small disadvantaged business concerns.... 214

20 Labor surplus area concerns.... 220

22 Application of labor laws to Government acquisitions.... 220

24 Protection of privacy and freedom of information. 221

Part *Page*

825 Foreign acquisition 221

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

828 Bonds and insurance 225
829 Taxes 227
831 Contract cost principles and procedures 229
832 Contract financing 232
833 Protests, disputes, appeals 233

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

834 Major systems acquisition 239
836 Construction and architect-engineer contracts 239
837 Service contracting 244

SUBCHAPTER G—CONTRACT MANAGEMENT

842 Contract administration 253
846 Quality assurance 255
847 Transportation 258
849 Termination of contracts 259

SUBCHAPTER H—CLAUSES AND FORMS

852 Solicitation provisions and contract clauses 262
853 Forms 288

SUBCHAPTER I—DEPARTMENT SUPPLEMENTARY REGULATIONS

870 Special procurement controls 291
871 Loan guaranty and vocational rehabilitation and counseling programs 293

SUBCHAPTER A—GENERAL

PART 801—VETERANS AFFAIRS ACQUISITION REGULATIONS SYSTEM

Sec.
801.000 Scope of part.

Subpart 801.1—Purpose, Authority, Issuance

801.101 Purpose.
801.102 Authority.
801.103 Applicability.
801.103-70 Exclusions.
801.104 Issuance.
801.104-1 Publication and code arrangement.
801.104-3 Copies.

Subpart 801.2—Administration

801.201 Maintenance of the FAR.
801.201-1 The two councils.

Subpart 801.3—Department Acquisition Regulations

801.301 Policy.
801.301-70 Paperwork Reduction Act requirements.
801.303 Codification and public participation.
801.304 Department control and compliance procedures.

Subpart 801.4—Deviations from the FAR or VAAR

801.403 Individual deviations.
801.404 Class deviations.
801.470 Rulemaking.

Subpart 801.6—Contracting Authority and Responsibilities

801.601 General.
801.602 Contracting officers.
801.602-2 Responsibilities.
801.602-3 Ratification of unauthorized commitments.
801.602-70 Legal/technical review requirements to be met prior to contract execution.
801.602-71 Processing contracts for legal/technical review.
801.602-72 Documents to be submitted for legal review.
801.602-73 Certification by reviewing official.
801.602-74 Results of General Counsel's legal review.
801.603 Selection, appointment, and termination of appointment.
801.603-1 General.
Sec.
801.603-70 Representatives of contracting officers.
801.603-71 Representatives of contracting officers; receipt of equipment, supplies and nonpersonal services.
801.670 Special and limited delegation.
801.670-1 Issue of Government bills of lading—transportation of remains of deceased beneficiaries.
801.670-2 Issue of Government bills of lading—transportation of property.
801.670-3 Medical, dental, and ancillary service.
801.670-4 National Cemetery System.
801.670-5 Letters of agreement.
801.670-6 $300 small purchase authority for Prosthetic Service personnel.
801.680 Contracting authority of the Inspector General.
801.690 VA Contracting Officer Certification Program.
801.690-1 Definitions.
801.690-2 General.
801.690-3 Responsibility for administration of Contracting Officer Certification Program (COCP).
801.690-4 Selection.
801.690-5 Appointment.
801.690-6 Termination.
801.690-7 Interim appointment provisions.
801.690-8 Distribution of SF 1402, Certificate of Appointment.
801.690-9 Post appointment maintenance of certifications. [Reserved]

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12583, Mar. 29, 1984, unless otherwise noted.

EDITORIAL NOTE: A nomenclature change affecting Part 801 appears at 52 FR 28559, July 31, 1987.

801.000 Scope of part.

This part prescribes general policies and background regarding the Veterans Affairs Acquisition Regulations (VAAR). It includes information regarding the maintenance and administration of the VAAR and includes procedures for deviations from the VAAR and the Federal Acquisition Regulations (FAR).

[49 FR 12583, Mar. 29, 1984, as amended at 54 FR 31961, Aug. 3, 1989]

Subpart 801.1—Purpose, Authority, Issuance

801.101 Purpose.

(a) This subpart establishes Chapter 8, Veterans Affairs Acquisition Regulations, of Title 48—Federal Acquisition Regulation System, Code of Federal Regulations.

(b) The VAAR must be utilized in conjunction with the FAR. The VAAR cannot be utilized by itself.

801.102 Authority.

The VAAR and any amendments thereto are issued by the Secretary of Veterans Affairs as provided by 38 U.S.C. 210 and the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)).

[49 FR 12583, Mar. 29, 1984, as amended at 54 FR 31961, Aug. 3, 1989]

801.103 Applicability.

(a) The FAR and the VAAR apply to all acquisitions of the Department (including construction) made with appropriated funds and procurements made with Supply Fund monies (38 U.S.C. 5021).

(b) The FAR and VAAR will apply to the special procurement programs authorized by Title 38 U.S. Code (Viz., Veterans Canteen Service and the Loan Guaranty programs), to the extent indicated in the VAAR.

[49 FR 12583, Mar. 29, 1984, as amended at 54 FR 40062, Sept. 29, 1989]

801.103-70 Exclusions.

The FAR and VAAR will not apply to purchases and contracts which utilize General Post Funds when such regulations would infringe upon a donor's prerogative to specify the exact item to be purchased and/or the source of supply.

801.104 Issuance.

801.104-1 Publication and code arrangement.

(a) Department of Veterans Affairs (VA) acquisition policies and procedures which directly affect the public will be published in the FEDERAL REGISTER as Chapter 8 of Title 48 CFR. Related material, not affecting the public, may also be published in the FEDERAL REGISTER when its inclusion will provide a logical, comprehensive statement of Department of Veterans' Affairs (VA) acquisition policies and procedures.

[49 FR 12583, Mar. 29, 1984, as amended at 54 FR 31961, Aug. 3, 1989; 54 FR 40062, Sept. 29, 1989]

801.104-3 Copies.

Cumulative editions of Chapter 8 of Title 48, Code of Federal Regulations are printed annually and may be purchased by the public from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

Subpart 801.2—Administration

801.201 Maintenance of the FAR.

This subpart describes the Department of Veterans Affairs' participation in the maintenance of the FAR.

[49 FR 12583, Mar. 29, 1984, as amended at 54 FR 31961, Aug. 3, 1989]

801.201-1 The two councils.

A designee of the Office of Acquisition and Materiel Management will represent the Department of Veterans Affairs on the CAA (Civilian Agency Acquisition) Council.

[49 FR 12583, Mar. 29, 1984, as amended at 54 FR 31962, Aug. 3, 1989]

Subpart 801.3—Department Acquisition Regulations

801.301 Policy.

(a) VAAR, amendments and interim changes thereto will be issued by the Secretary of Veterans Affairs after necessary reviews by cognizant VA officials.

(b) Implementing procedures, instructions and guidelines necessary to implement the VAAR and the FAR may be issued by the heads of contracting activities. Such issuances may include delegations of authority, review and approval for acquisition action up to the dollar level delegated to that contracting activity by this regulation as well as providing procedural guidance for users. Such issuances will be the minimum necessary to provide a logical implementation of FAR and VAAR requirements and will be internal to the facility, i.e., it will not specify reporting/recordkeeping requirements for the public (see 801.301-70(b)).

(c) As required by the Small Business and Federal Procurement Competition Enhancement Act (Pub. L. 98-577), any acquisition policy, form or procedure must be published in the FEDERAL REGISTER for public comment if it has:

(1) A significant effect beyond the internal procedures of the agency issuing the procurement policy, regulation, procedure or form, or

(2) A significant cost or administrative impact on contractors or offers.

Any facility or Central Office element having or proposing to issue a policy, form or procedure requiring public comment shall arrange for the necessary FEDERAL REGISTER publication through the Deputy Assistant Secretary for Acquisition and Materiel Management (93).

[49 FR 12583, Mar. 29, 1984, as amended at 52 FR 28559, July 31, 1987; 54 FR 31962, Aug. 3, 1989]

801.301-70 Paperwork Reduction Act requirements.

(a) It is the policy of the Government to keep to the minimum the amount of recordkeeping and reporting required of the public. This objective applies to the Department of Veterans Affairs acquisition system.

(b)(1) Contractors will not be requested to maintain systems of records unless prescribed in FAR or this VAAR. A deviation to this prohibition may be processed in accordance with 801.403 in order to allow the contracting officer to require contractor reporting or recordkeeping beyond that prescribed in FAR and VAAR. The request for deviation will clearly specify what information or recordkeeping will be required and why it is required. The request will be signed by the head of the contracting activity.

(2) The Deputy Assistant Secretary for Acquisition and Materiel Management (93) will review the request and upon concurrence will likewise submit the request to Office of Management and Budget (OMB) for approval as prescribed by the Paperwork Reduction Act of 1980. If approved, the Deputy Assistant Secretary for Acquisition and Materiel Management will send the approval back to the requester with the OMB clearance number.

(c) In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the reporting or recordkeeping provisions that are included in this VAAR have been approved by OMB and have been given the following approval numbers:

48 CFR part or section where identified and described	Current OMB control No.
809.504(d)	2900-0418
819.7003	2900-0445
836.606-71	2900-0422
852.236-72	2900-0422
852.236-79	2900-0422
852.236-81 through 852.236-85	2900-0422
852.236-88	2900-0422
871.201-2	2900-0416

[49 FR 12583, Mar. 29, 1984, as amended at 50 FR 790, Jan. 7, 1985; 54 FR 31962, Aug. 3, 1989; 54 FR 40062, Sept. 29, 1989]

801.303 Codification and public participation.

The VAAR is codified as Chapter 8 of Title 48, Code of Federal Regulations. Codified changes to the VAAR will be published in the FEDERAL REGISTER. The Deputy Assistant Secretary for Acquisition and Materiel Management arranges distribution of the issues to VA contracting activities and the Office of Acquisition and Materiel Management should be notified of changes to the distribution list.

[49 FR 12583, Mar. 29, 1984, as amended at 54 FR 31962, Aug. 3, 1989]

801.304 Department control and compliance procedures.

Office of Acquisition and Materiel Management is responsible for ensuring that the VAAR and amendments thereto are developed as prescribed by the FAR.

[49 FR 12583, Mar. 29, 1984, as amended at 54 FR 31962, Aug. 3, 1989]

Subpart 801.4—Deviations From the FAR or VAAR

801.403 Individual deviations.

(a) When contracting officers consider it necessary to deviate from the policies set forth in the FAR or VAAR, a request for authority to do so will be submitted to the Deputy Assistant Secretary for Acquisition and Materiel Management (93). The request will clearly set forth the circumstances warranting the deviation and nature of the deviation.

(b) When a deviation in an individual case is authorized by the Deputy Assistant Secretary for Acquisition and Materiel Management, the authorization will be filed in the purchase or contract file, whichever is appropriate. The Deputy Assistant Secretary for Acquisition and Materiel Management will review each deviation authorized and when considered necessary either prepare a change to the VAAR or recommend a change to the FAR through the CAA Council.

[54 FR 31962, Aug. 3, 1989]

801.404 Class deviations.

The Deputy Assistant Secretary for Acquisition and Materiel Management is responsible for determining the need for class deviations. If determined necessary, the Deputy Assistant Secretary for Acquisition and Materiel Management will request deviation authority from the Deputy Secretary through the Senior Procurement Executive as well as complying with the provisions in FAR 1.404.4

[49 FR 12583, Mar. 29, 1984, as amended at 52 FR 49016, Dec. 29, 1987; 54 FR 31962, Aug. 3, 1989]

801.470 Rulemaking.

(a) VAAR amendments which implement FAR requirements, Office of Federal Procurement Policy (OFPP) directives and legislation or are related to Department management or personnel, will be issued as "Final Rules" in the FEDERAL REGISTER as provided in the Administrative Procedures Act, 5 U.S.C. 553.

(b) VAAR amendments which significantly affect the public and for which the Department of Veterans Affairs has discretion (as opposed to amendments required by FAR, OFPP or legislation) will be developed in accordance with the proposed rulemaking procedures of the Administrative Procedures Act. This procedure generally involves issuing a notice of proposed rulemaking in the FEDERAL REGISTER inviting public comment. Any comments received will be reviewed and when appropriate will be incorporated in the final rule. The final rule will also be published in the FEDERAL REGISTER and will include a discussion of the comments received and their disposition.

[49 FR 12583, Mar. 29, 1984, as amended at 54 FR 31962, Aug. 3, 1989; 54 FR 40062, Sept. 29, 1989]

Subpart 801.6—Contracting Authority and Responsibilities

801.601 General.

(a) This subpart establishes general contracting officer authority and responsibility. However, other provisions in both the FAR and the VAAR contain some contracting officer limitations and it is incumbent upon each contracting officer to be aware of those limitations.

(b) Personnel, other than those designated in 801.602, may determine quality, quantity and delivery requirements for items or services to be purchased. However, under no circumstances will individuals who have not been delegated contracting authority commit the Government for purchases of supplies, equipment or services. Individuals making such commitments may be held financially liable for the amount of the obligation.

801.602 Contracting officers.

(a) Except as otherwise provided by law, VA regulations, VAAR and FAR, the authority vested in the Secretary to execute, award, and administer contracts, purchase orders, and other agreements (including interagency agreements) for the expenditure of funds involved in the acquisition of personal property, services (including architect-engineer services), construction, issuing Government bills of lading, and for the sale of personal property, is hereby delegated to the Senior Procurement Executive. The Senior Procurement Executive further delegates the authority to the Deputy Assistant Secretary for Acquisition and Materiel Management.

(b) Further delegation of this authority will be made in accordance with the Contracting Officer Certification Program as prescribed in VAAR 801.690 and as otherwise provided in VAAR 801.670 and its subsections.

(c) The employee appointed as contracting officer will function within the limits prescribed by law, VA regulations, VAAR and FAR.

[52 FR 24010, June 26, 1987, as amended at 54 FR 31962, Aug. 3, 1989]

801.602-2 Responsibilities.

(a) In the administration of a contract, many problems can and do arise that make the advice and assistance of the General Counsel either desirable or necessary. The final decision as to the action to be taken, however, must be made by the contracting officer in each instance. To reduce to the absolute minimum the possibility of litigation resulting from his/her decision, the contracting officer shall, except as provided in paragraph (c) of this section, submit the problem through channels in sufficient detail to the General Counsel for advice or assistance.

(b) While legal review and concurrence of the General Counsel is required prior to a default termination, in some cases where a quick response is necessary, this review can be expedited by express mailing or telefaxing the default letter and related documents which are required to make an evaluation directly to the General Counsel (025). The default termination letter should contain, at a minimum, the following:

(1) The proposed termination (FAR 49.102);

(2) An explanation of what necessitated the default, including the reasons why the contracting officer considers the contractor to be in default;

(3) A statement that the factors set forth in FAR 49.402-3(f) have been fully considered; and

(4) Final decision language and appeal rights.

(c) Contracts containing a mutual termination clause may be terminated without reference to the General Counsel.

[49 FR 12583, Mar. 29, 1984, as amended at 54 FR 31962, Aug. 3, 1989]

801.602-3 Ratification of unauthorized commitments.

(a) Contracting officers shall not ratify contractual commitments made by other VA personnel without prior approval as prescribed below. Such unauthorized commitments include commitments made by other contracting officers which exceed their respective contracting authority as well as unauthorized commitments made by individuals lacking contracting authority.

(1) At field stations, for supplies, services and construction, the approving authority is the director of the field facility concerned.

(2) For central office contracting officers, for supplies, and services and construction, the approving authorities are the heads of the administrations and directors of the staff offices concerned, and the Deputy Assistant Secretary for Acquisition and Materiel Management.

(3) For acquisitions of leasehold interest in real property the approving authority is:

(i) The Deputy Assistant Secretary for Facilities, for 1-5,000 square feet, and for 1-100 parking spaces costing less than $50,000 per annum.

(ii) The Assistant Secretary for Acquisition and Facilities for 5,001-20,000 square feet, and for parking spaces exceeding 100 which cost less than $100,000 per annum.

(iii) The Deputy Secretary for 20,001 square feet and above, and for parking spaces exceeding 100 which cost more than $100,000 per annum.

(4) This approval authority shall not be redelegated.

(b) Requests received by contracting officers for ratification of commitments made by personnel lacking contracting authority shall be processed as follows:

(1) The individual who made the unauthorized contractual commitment shall furnish the contracting officer all records and documents concerning

the commitment and a complete written statement of facts, including, but not limited to, a statement as to why the procurement office was not utilized, why the proposed contractor was selected and a list of other sources considered, description of work to be performed or products to be furnished, estimated or agreed contract price, citation of appropriation available, and a statement of whether the contractor has commenced performance.

(2) The contracting officer will review the file and forward it to the approving authority specified in paragraph (a) of this section with any comments or information which should be considered in evaluation of the request for ratification. If legal review is desirable, the approving authority will coordinate the request for ratification with the Office of General Counsel or the District Counsel, as appropriate.

(3) If ratification is authorized, the file will be returned to the contracting officer for issuance of a purchase order or contract, as appropriate.

(c) In the case of otherwise proper contract awards made by contracting officers in excess of the limits of their delegated authority, the need for ratification will be brought to the attention of the head of the contracting activity. That individual will take such action as may be indicated to preclude future instances of such awards.

[54 FR 31962, Aug. 3, 1989]

801.602-70 Legal/technical review requirements to be met prior to contract execution.

(a) The following categories of proposed contracts and agreements will be reviewed and concurred in by the Office of Acquisition and Materiel Management prior to contract execution. (Additionally, the Office of Acquisition and Materiel Management may, when considered necessary, request preaward technical review regardless of dollar value). Office of General Counsel legal reviews of such proposed contracts and agreements will be performed when requested and determined necessary by the Office of Acquisition and Materiel Management. (Excluded from this requirement is the Marketing Center which will perform its own technical reviews at the thresholds herein prescribed. The Marketing Center will receive preaward legal review of solicitation from the General Counsel staff located in Hines, Illionis).

(1) All negotiated and sealed bid contracts (except as specified in (a)(2) and (a)(3)) exceeding $250,000 in either appropriated or nonappropriated funds. This includes indefinite quantity contracts when expenditures of $250,000 or more can reasonably be expected, and multiyear contracts in which $250,000 or more will be expended over the life of the contract. (Note also that multiyear contracts also require review any time the cancellation ceiling exceeds 20 percent of the contract amount (see 817.1)).

(2) All fixed price, sealed bid construction contracts involving $500,000 or more in either appropriated or unappropriated funds.

(3) All 8(a) contracts exceeding $500,000.

(4) All proposed agreements and contracts coming within the purview of one or more of the following:

(i) Contracts for insurance.

(ii) Utility service agreements involving $50,000 or more.

(iii) Contracts for consulting services (see Subpart 837.2) and management and professional services (see 837.271).

(iv) Contracts for research or research and development involving $50,000 or more.

(v) Automatic data processing equipment, when purchased from other than a Federal Supply Service contract, involving $50,000 or more.

(vi) Competitive contracts exceeding $50,000 and noncompetitive contracts exceeding $200,000, for scarce medical specialist services.

(vii) Competitive contracts exceeding $50,000 and noncompetitive contracts exceeding $200,000 for the mutual use, or exchange of use, of specialized medical resources.

(viii) Agreements with other Federal agencies involving the expenditures of Department of Veterans Affairs funds of $5,000 or more.

(ix) Contracts for ADP software exceeding $10,000.

(x) ADP software licensing agreements for ADP software exceeding

$10,000 (all software licensing agreements require technical review).

(5) All proposed letter contracts and ensuing formal contracts involving expenditures of $5,000 or more.

(6) Any proposed agreement that is unique, novel or unusual (including all consignment agreements, regardless of anticipated dollar value—except those established and provided in Federal Supply Schedule Contracts).

(7) Step One of two-step sealed bid procurements when the anticipated value is more than $200,000.

(b) The following categories of proposed contractual actions require the concurrence of the General Counsel:

(1) Contract modifications, terminations (including final decision (cure) letters), disputes and claims in excess of $25,000 ($50,000 for contracts awarded by the Office of Facilities).

(2) Contract modifications granting a time extension of more than 20 days.

(3) Assignment of claims.

(4) Proposed awards to other than the low evaluated bidder/offeror.

(c) In addition to the requirements of paragraphs (a) and (b) of this section, the following require review and concurrence of the General Counsel:

(1) Changes or revisions to all contract clauses.

(2) Changes or revisions to prescribed VA contract forms.

(d) Utility construction and connection contracts which are developed in the Office of Facilities and cost $50,000 or more will he be reviewed by General Counsel and the Deputy Assistant Secretary for Facilities.

(e) When legal assistance is requested by any Central Office contracting activity, the contracting officer will brief the General Counsel regarding the facts and points of issue to facilitate prompt resolution.

(f) With regard to solicitations and contracts awarded and administered by the Central Office contracting activities, the General Counsel will be requested to participate in conferences where it is expected that legal problems or contract provisions will be considered, and in meetings attended by legal representatives of private parties or other Government agencies. Assigned procurement counsel will be requested to participate in the drafting of correspondence involving controversial or sensitive contractual matters of a significant nature.

(g) All protests against award will be reviewed by General Counsel in accordance with the provisions specified in 813.103.

(h) Excluded from these legal review requirements are:

(1) Agreements, licenses, easements, or deeds dealing with management, sale, or lease of properties acquired by VA as a result of liquidation of guaranteed, direct, acquired or vendee loans.

(2) Orders or contracts for procurement of leased telecommunications systems, installation of and changes to telephone PBX systems at individual Department of Veterans Affairs locations or orders issued under GSA area-wide contracts with the American Telephone and Telegraph Company and local telephone companies.

(i) If a change order (unilateral agreement) is essential for the logical process of the contract, the Office of Acquisition and Materiel Management (93D) shall be called prior to issuing the document. (This requirement does not apply to change orders issued by the Office of Facilities.)

(j) The following apparent low responsive and responsible bids/offers with the respective solicitations will be submitted for the review of the Deputy Assistant Secretary for Acquisition and Materiel Management (93D), prior to award:

(1) Negotiated contract actions in the Office of Facilities which exceed $2 million.

(2) Bids/offers for construction contracts to be awarded by VHS&RA facilities which exceed $5 million.

(3) Bids/offers for service contracts, including A/E, which exceed $2 million, and

(4) Bids/offers for supply contracts which exceed $5 million in total evaluated cost (excluding FSS contracts awarded by VA Marketing Center).

[49 FR 12583, Mar. 29, 1984, as amended at 50 FR 791, Jan. 7, 1985; 51 FR 23066, June 25, 1986; 52 FR 28559, July 31, 1987; 52 FR 49016, Dec. 29, 1987; 54 FR 31963, Aug. 3, 1989; 55 FR 31391, Aug. 2, 1990]

801.602-71 Processing contracts for legal/technical review.

(a) All competitively awarded solicitations requiring legal and/or technical review will have such reviews completed prior to opening of bids or proposals. The contracting officer will fully evaluate technical and legal review comments prior to opening bids or proposals. Potential bidders/offerors will be advised of changes to the solicitation by amendment and afforded sufficient time for evaluation prior to opening of bids or offers.

(b) *Veterans Health Services and Research Administration (VHS&RA) Field Facilities, VA Marketing Center, VA Supply Depots.* (1) Proposed contracts or agreements specified in 801.602-70(a) (1), (2), (3), (4) (iii) through (v), (5), (6) and (7) will be forwarded by the contracting officer directly to the Deputy Assistant Secretary for Acquisition and Materiel Management (93). The Deputy Assistant Secretary for Acquisition and Materiel Management will review the submissions and when applicable, forward them directly to the General Counsel (025).

(2) Proposed sharing agreements and contracts for specialized medical services specified in 801.602-70(a)(4) (vi) and (vii) will be forwarded to Central Office in accordance with 815.7001 for review and submission to the General Counsel (023).

(3) Proposed interagency agreements specified in 801.602-70(a)(4)(viii) will be forwarded by the approving official to the Deputy Assistant Secretary for Acquisition and Materiel Management (93). The Deputy Assistant Secretary for Acquisition and Materiel Management will review the submissions and forward them directly to the General Counsel (025).

(4) Proposed facility-level modification specified in 801.607-70(b) will be forwarded by the contracting officer to General Counsel (025), through the Deputy Assistant Secretary for Acquisition and Materiel Management (93D).

(5) Proposed final decisions or settlement agreements specified in 801.602-70(b) will be forwarded by the contracting officer directly to the Deputy Assistant Secretary for Acquisition and Materiel Management. The Deputy Assistant Secretary for Acquisition and Materiel Management will review the submissions and forward them to the General Counsel (025).

(6) Proposed revisions to contract clauses specified in 801.602-70(c) will be forwarded by the contracting officer directly to the Deputy Assistant Secretary for Acquisition and Materiel Management. If concurred in, the Deputy Assistant Secretary for Acquisition and Materiel Management will forward them directly to the General Counsel.

(c) *Veterans Benefits Administration field facilities.* (1) All proposed State reimbursement contracts and Guidance Center and Vocational Rehabilitation contracts which are anticipated to ultimately involve the expenditure of $100,000 or more, will be forwarded by the contracting officer directly to the Director, Vocational Rehabilitation and Education Service, for review and approval. The Director, Vocational Rehabilitation and Education Service will review the submissions and forward them to the General Counsel.

(2) Any other proposed agreement or contract specified in 801.602-70(a) will be forwarded by the facility Director to the Chief Benefits Director for Field Operations (201) for coordination with Director(s) of the concerned service(s) and submission to the General Counsel.

(3) Any other element of contracting falling within 801.602-70 (b) and (c) will be processed in accordance with paragraph (b)(2) of this section.

(d) *Central office.* Any element of contracting prescribed for legal review in 801.602-70 originating in central office, will be submitted for legal review by the contracting officer, or approving official in the case of agreements with other Government agencies through the Deputy Assistant Secretary for Acquisition and Materiel Management (93D). (Except that in the case of Office of Facilities contracts, a selected sample of contracts will be processed through the Office of Acquisition and Materiel Management (93D). All other Office of Facilities contract actions identified in 801.602-70 will be sumitted for legal review in accordance with Office of Facilities procedures).

(e) All bids/offers required to be reviewed prior to award in accordance with 801.602-70(j), will be forwarded to the Deputy Assistant Secretary for Acquisition and Materiel Management (93D), with a cover letter identifying:

(1) The date in which the award is anticipated;

(2) Responsibility determination results or efforts ongoing;

(3) Determinations of price reasonableness;

(4) Explanation of proposed award to other than low responsible bidder/offeror.

[49 FR 12583, Mar. 29, 1984, as amended at 52 FR 28559, July 31, 1987; 52 FR 49017, Dec. 29, 1987; 54 FR 31963, Aug. 3, 1989; 54 FR 40062, Sept. 29, 1989]

801.602-72 Documents to be submitted for legal review.

The following documents are to be submitted for legal review:

(a) For proposed construction contracts, one copy of all solicitation documents, excluding drawings. These documents will be submitted no later than at the time they are furnished to prospective bidders. Where feasible, these documents should be submitted for review prior to the time they are furnished to prospective bidders.

(b) For sharing agreements and scarce medical specialist contracts, the documents referred to in 815.7001.

(c) For all other proposed contracts and agreements, a copy of the documents to be used in the solicitation and/or award of contract, including any other documents which support the proposed procurement action, e.g., justification and approval in the case of noncompetitive procurement. Solicitation documents will be submitted no later than at the time they are mailed to prospective bidders. Where feasible, these documents should be submitted for review prior to the time they are mailed to prospective bidders.

(d) For contract modifications described in 801.602-70(b) and 801.602-71(b)(4) and (d):

(1) A draft of the proposed modification. This shall be prepared on an SF (Standard Form) 30, Amendment of Solicitation/Modification of Contract, and shall specify the exact language to be used. Changes in work, time and cost must be specifically described;

(2) A statement describing the need for the changed work. This should also be accompanied by any backup documentation, including a copy of the general statement of work in the original contract plus any existing contract language which will be modified. Include a statement that the work covered by the proposed modification is or is not within the original scope of the contract, setting forth fully the facts considered in reaching the conclusion;

(3) A statement containing an analysis on what necessitated the modification, e.g., design error, technical change, medical center requirements;

(4) The contracting officer's technical representative (COTR) technical evaluation of the proposed change;

(5) For construction modifications and, where applicable for architect-engineer (A/E) modifications, a copy of drawings which the COTR has marked up to delineate the proposed changed work. If appropriate, include a copy of the pertinent technical specifications. Whenever a proposed contract modification involves numerous changes to drawings and specifications for a Central Office project, the drawings and specifications will be available for review in the office of the Project Director;

(6) Costing information including:

(i) The contractor's cost proposal in the format required by the contract.

(ii) The COTR's independent cost evaluation.

(iii) The A/E's independent cost evaluation.

(iv) Contracting officer's Price Negotiation Memorandum (PNM) in accordance with VAAR 815.808. For Office of Facilities contracts, the PNM may be submitted by either the contracting officer or COTR.

(v) For A/E contracts, a listing of the fees awarded in the original contract and previous modifications.

(vi) For A/E working drawing contracts, a statement regarding the actual or estimated cost of the original construction and any estimated change to the overall project cost as a result of the proposed modification.

(vii) Any other relevant costing information, such as independent market research, which was or will be used as negotiation criteria.

(7) A concurrence on the memorandum from the appropriate office indicating that funds are available or a statement concerning the actions which must be taken to secure the required funds; and

(8) The names and telephone numbers of the contracting officer and COTR.

(e) For bids/offers submitted as required by 801.602-70(j), the following documents will be provided:

(1) Request for contract action, including justification of need.

(2) The solicitation.

(3) Abstracts of bids/offers.

(4) Price negotiations memorandum, if applicable.

(5) Justification and approval (see 806.303), if applicable.

(6) Documents relevant to determination of contractor's responsibility.

(7) Documents relevant to price reasonableness.

[49 FR 12583, Mar. 29, 1984, as amended at 51 FR 23066, June 25, 1986; 52 FR 28559, July 31, 1987; 52 FR 49017, Dec. 29, 1987; 54 FR 31964, Aug. 3, 1989; 54 FR 40062, Sept. 29, 1989]

801.602-73 Certification by reviewing official.

In submitting proposed agreements or contracts received from field stations to the General Counsel, the Central Office reviewing officials will state on the transmittal memorandum or within the file that the proposal conforms to the Federal Acquisition Regulations and Veterans Administration Acquisition Regulations to the best of their knowledge.

801.602-74 Results of General Counsel's legal review.

(a) Upon completion of the review, the General Counsel will advise the appropriate Central Office activity or contracting officers as to whether the proposal was approved as submitted or provide them with the recommended changes. The appropriate Central Office activity will advise the contracting officer as to whether: (1) The submission was approved as is, or (2) provide a copy of the changes required. Where changes are required, the contracting officer will take immediate action to amend the solicitation document.

(b) The General Counsel's review will be completed as expeditiously as possible, with due regard to those procurement actions where circumstances dictate an unusually short period for completing procurement action.

801.603 Selection, appointment, and termination of appointment.

801.603-1 General.

The policy and procedures for the selection, appointment, and termination of appointment of contracting officers are established in VAAR 801.690, The Contracting Officer Certification Program, and as otherwise provided in VAAR 801.670 and its subsections.

[52 FR 24010, June 26, 1987]

801.603-70 Representatives of contracting officers.

(a) In carrying out the responsibilities of FAR 1.602-2, the contracting officer may designate another Government contracting officer, or other Government employees, or another contractor:

(1) To furnish technical guidance and advice or generally supervise the work performed under the contract. Such designations will be in writing and will define the scope and limitation of the representative's authority; and, will be addressed to the designee with a copy to be forwarded to the contractor except as indicated in 801.603-71. Except as provided in paragraph (c) of this section representatives will not be authorized to make any commitments or changes which will affect the price, quantity, quality or delivery terms. (All changes to a contract must be authorized by a contracting officer acting within the scope of his/her authority.)

(2) To take actions authorized in the contract, such as issue delivery orders, reject unsatisfactory items, order replacement of such items (materials or services) and, when necessary, declare contractor in default on specific deliv-

ery orders. Except for blood, this authority will be delegated only to other Government contracting officers under centralized indefinite delivery type contracts and the contract will so state. Centralized contracts for blood will provide that contracting officers at ordering offices are authorized to designate representatives and alternate representatives to place delivery orders subject to the same restrictions stated in paragraph (a)(3) of this section.

(3) To place oral or other informal delivery orders for items such as, but not limited to, bread, milk, and blood against local indefinite delivery type contracts on which blanket purchase arrangements have been established and funds have been obligated. The designation of representatives and alternates will be in writing and will define the scope and limitations of the representative's authority, and will be addressed to the employee(s) with a copy to the contractor. Such designations will be made only by the prime contracting officer and are not redelegable.

(b) In the administration of research and development contracts, any representative appointed pursuant to this section must be acceptable both to the contracting officer and the administration head or staff office director concerned. When it is necessary to designate a representative under this paragraph (b), the clause in 852.270-1 will be observed.

[49 FR 12583, Mar. 29, 1984, as amended at 52 FR 24010, June 26, 1987; 54 FR 40062, Sept. 29, 1989]

801.603-71 Representatives of contracting officers; receipt of equipment, supplies, and nonpersonal services.

(a) Except as provided in paragraphs (b), (c) and (d) of this section, any contracting officer may, without prior notification to the contractor or vendor, designate the Chief, Storage and Distribution Section, or other competent personnel, to represent him/her in receiving and inspecting supplies, equipment and services at his/her facility. Duties such as, but not limited to, the following will be performed by these designees:

(1) The inspection and certification as to compliance with the quality and quantity requirements of the purchase order or contract; and

(2) Inspection of supplies and equipment for condition and quantity and the acceptance of supplies, equipment, and services, based on quality inspection made by other authorized representatives.

(b) The Chief, Central Office Library Division, and the Chief, Library Service, at a field facility, are designated the representatives of the contracting officer to receive, inspect and accept library books, newspapers, and periodicals. Purchase documents will specify that delivery will be made direct to the library.

(c) The Chief, Stock Control Division, VA Supply Depot, Hines, Ill., is hereby designated as the representative of each contracting officer and purchasing agent of the various marketing divisions of the VA Marketing Center, Hines, Ill., for the purpose of accepting, on behalf of the Department of Veterans Affairs, items purchased for stock. The Chief, Stock Control Division, may designate one or more employees of the Incoming Property Section, Supply Control Division, to represent him/her and authority is hereby delegated to such designees to accept such property on behalf of the Department of Veterans Affairs Designations will be confined to those employees to whom such responsibility has been assigned by their position descriptions. The Chief, Fiscal Service, will be furnished a list of such designees. Where inspection for compliance with specifications, purity, quality, or other element must be made by the Service and Reclamation Division or other testing agency, acceptance will be contingent upon receipt of a properly prepared inspection report.

(d) The Chiefs, Service and Reclamation Divisions, Department of VA Supply Depots at Hines, Ill., Somerville, N.J., and Bell, Calif., are hereby designated as the respresentatives of the contracting officers and purchasing agents of the various marketing divisions of the Veterans Affairs Marketing Center, Hines, Ill., for the purpose of inspecting, when requested, supplies and equipment for compliance with technical, mechanical, operating, and other specifications. The results of such inspections will be forwarded to the Chief, Stock Control Division, VA Supply Depot, Hines, IL 60141, when the item(s) involved is for stock, and to the appropriate contracting officer or purchasing agent for all other items.

(e) The Chief of each Service and Reclamation Division may designate one or more employees of his/her division to represent him/her; and, authority is hereby delegated to such designees to perform the inspection functions set forth in paragraph (d) of this section. (Designations shall be in writing with a copy furnished to the Director, VA Marketing Center, Hines, Ill. Designations will remain in effect unless revoked. The reassignment or termination of either the designee or the Chief, Service and Reclamation Division, issuing the designation will serve as an automatic rescission of the designation.)

[49 FR 12583, Mar. 29, 1984, as amended at 54 FR 31964, Aug. 3, 1989; 54 FR 40062, Sept. 29, 1989]

801.670 Special and limited delegation.

The authority vested in the Secretary to execute, award and administer contracts, purchase orders and other agreements for the expenditure of funds involved in the acquisition of the specific services set forth in this 801.670 and its subsections, is hereby delegated to the Senior Procurement Executive for further delegation to those employees appointed or designated to the positions specified in these subsections.

[49 FR 12583, Mar. 29, 1984, as amended at 54 FR 31964, Aug. 3, 1989]

801.670-1 Issue of Government bills of lading—transportation of remains of deceased beneficiaries.

The Chief, Medical Administration Service, at a Department of Veterans Affairs medical center, or the person acting in that capacity, is delegated authority to issue and to sign as "Issuing Officer," Government bills of lading for the shipment of the remains of beneficiaries expiring in a Department of Veterans Affairs medical center.

[49 FR 12583, Mar. 29, 1984. Redesignated at 52 FR 24010, June 26, 1987]

801.670-2 Issue of Government bills of lading—transportation of property.

(a) Authority to issue and sign Government bills of lading for the transportation of supplies, material, and equipment is delegated to the following:

(1) Chiefs, Transportation Sections, VA Supply Depots.

(2) Chief, Warehouse Section, VA Forms and Publications Depot.

(3) Traffic Manager, Office of Acquisition and Materiel Management, Central Office.

(b) The employees named in paragraph (a) of this section may designate one or more of their subordinates as a contracting officer; and, authority is hereby delegated to such subordinates to issue and sign Government bills of lading for the transportation of supplies, material, and equipment. Designations will be in writing and specifically set forth the scope and limitation of the designee's authority.

[49 FR 12583, Mar. 29, 1984. Redesignated at 52 FR 24010, June 26, 1987, and amended at 54 FR 31964, Aug. 3, 1989; 54 FR 40062, Sept. 29, 1989]

801.670-3 Medical, dental, and ancillary service.

(a) The Chief of Staff, the physician assigned the responsibility for the ambulatory care function, and Chief, Medical Administration Service, at a Department of Veterans Affairs facility are delegated authority to execute authorizations for medical, dental, and ancillary services under $10,000 per authorization when such services are not available from existing contracts or agreements. Forms specified in Part 853 of this chapter will be used for this purpose and when ordering such services from existing contracts.

(b) The contracting officers named in paragraph (a) of this section may designate one or more of their subordinates to execute the forms for purposes stated in paragraph (a) of this section. Designations will be in writing and will specifically set forth the scope and limitations of the designee's authority.

[49 FR 12583, Mar. 29, 1984, as amended at 50 FR 791, Jan. 7, 1985. Redesignated at 52 FR 24010, June 26, 1987, and further amended at 54 FR 31964]

801.670-4 National Cemetery System.

Authority for the National Cemetery System to procure supplies, equipment and nonpersonal services is delegated as follows:

(a) Authority to issue and sign Government bills of lading for the transportation of headstones and markers is further delegated to:

(1) Chief, Acquisition Division, Monument Service.

(2) Chief, Transportation Section, Monument Service and Freight Rate Specialist.

(b) Authority to procure, in emergency situations when the servicing supply organization cannot be utilized, and in accordance with the provisions of FAR Part 13, supplies, equipment, and nonpersonal services (including construction) required for the operation of national cemeteries is delegated to:

(1) Director, National Cemetery System, and Deputy Director, National Cemetery System.

(2) Director and Deputy Director, National Cemetery Area Office.

(c) Authority to procure items and nonpersonal services up to $300 per transaction for the operation of national cemeteries is delegated to the Director of each national cemetery. The authority is to be used only in emergency situations when the servicing supply organization cannot be utilized, and the method of purchase is limited to the use of SF 44, Purchase Order--Invoice—Voucher, (FAR 13.505-3).

[49 FR 12583, Mar. 29, 1984. Redesignated and amended at 52 FR 24010, June 26, 1987; 54 FR 31964, Aug. 3, 1989]

801.670-5 Letters of agreement.

(a) Authority to execute, award, and administer letters of agreement (subject to the limitation prescribed in 837.2) is delegated to the following:

(1) General Counsel.

(2) Deputy Assistant Secretary for Personnel and Labor Relations.

(3) Chief Medical Director.

(4) Chief Benefits Director.

(5) Chief Memorial Affairs Director.

(6) Deputy Assistant Director for Acquisition and Materiel Management

(7) Inspector General.

(8) Directors, Regional Medical Education Centers (limited to obtaining instructors and training pursuant to section 4122 of Title 38, United States Code).

(9) Directors, Domiciliary and Medical Centers and Research and Development Service Directors authorized to sign for the Assistant Chief Medical Director for Research and Development (limited to obtaining peer review of research (see 837.2)).

(b) The contracting officers named in paragraphs (a) (1) through (7) of this section may designate one or more subordinates, and authority to execute the same duties and responsibilities is hereby delegated to such subordinates. Such subordinates will be no more than one organizational level below the contracting officers designated in paragraph (a) of this section, except that the Chief Medical Director may designate the Regional Directors. All such designations will be in writing, will specifically state the scope and limitations of the designees' contractual authority, and will also specifically prohibit further delegation by the designees. Copies of the delegation will be submitted to the Office of Acquisition and Materiel Management (93).

(c) Copies of all letters of agreement issued by the designees identified in paragraphs (a) and (b) of this section will be forwarded to the servicing contracting activity in order that the procurement action may be entered into the Federal Procurement Data System.

[49 FR 12583, Mar. 29, 1984, as amended at 50 FR 791, Jan. 7, 1985. Redesignated at 52 FR 24010, June 26, 1987, and further amended at 54 FR 31964, Aug. 3, 1989; 54 FR 40062, Sept. 29, 1989]

801.670-6 $300 small purchase authority for Prosthetics Service personnel.

As prescribed by the VHS&RA Manual M-2, Part IX, Chapter 4, Section A, Prosthetics Service personnel at VA medical centers may issue orders for prosthetic items not in excess of $300 per transaction. VA Form 10-2421, Prosthetics Authorization and Invoice, will be used for such orders.

[49 FR 12583, Mar. 29, 1984. Redesignated at 52 FR 24010, June 26, 1987, and amended at 54 FR 31964, Aug. 3, 1989; 54 FR 40062, Sept. 29, 1989]

801.680 Contracting authority of the Inspector General.

(a) As provided by section 6(a) of Pub. L. 95-452 (October 12, 1978), the Inspector General is authorized to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the provisions of the Act, to the extent and in such amounts as may be provided in advance by appropriations Acts.

(b) In exercising the special authority provided in paragraph (a) of this section, the Inspector General may request the assistance of the servicing Supply Service in developing appropriate contract or agreement documents.

(c) If, in the opinion of the Inspector General, a reason to exercise the special authority does not exist, the services required by the Inspector General shall be obtained by the servicing Supply Service in accordance with the provisions of FAR and VAAR.

(d) Contracts entered into under the authority of paragraph (a) of this section are subject to the provisions of the Federal Acquisition Regulations. In addition, such contracts are subject to those provisions of VAAR which implement and supplement the FAR on matters other than those stemming from or related to delegations of the Secretary's contracting authority (e.g., management controls and approvals specified in Subpart 837.2 will not apply to contract actions under the contract authority of the Inspector General).

[49 FR 12583, Mar. 29, 1984, as amended at 50 FR 791, Jan. 7, 1985; 54 FR 31964, Aug. 3, 1989]

801.690 VA Contracting Officer Certification Program.

The policy and procedures for the VA-wide Contracting Officer Certification Program (COCP) are established in this section and subsections.

[52 FR 24010, June 26, 1987]

801.690-1 Definitions.

(a) "Head of the Contracting Activity" (HCA) means an individual who has overall responsibility for managing the procurement program assigned to the activity. HCA designations are prescribed in VAAR 802.100. The HCA has the authority to appoint contracting officers with authority to conduct procurements of up to and including $25,000 or the maximum order limitation for orders placed against established contracts, and terminate such appointments.

(b) "Recommending official" means an individual who is authorized by VAAR 801.690 and its subsections to recommend to a designating official that an individual be appointed as a contracting officer.

(c) "Designating official" means an individual who is authorized to appoint and terminate contracting officers.

(d) "Contracting Officer Certification Board" (COCB) means the group of Department officials, listed in VAAR 801.690-3(c), that evaluates and recommends to the designating official individuals as contracting officers at the Intermediate and Senior levels of authority, which levels are described in VAAR 801.690-2(c).

(e) "Contracting Officer Certification Program" (COCP) means a program designated by Department management for the selection, appointment, and termination of appointment of contracting officers. Training, experience, education, performance, and conduct are the objective criteria reviewed prior to appointment as contracting officer.

(f) "Qualifications" means an employee's record of training, experience, education, performance, and conduct which are reviewed prior to designation as contracting officer. These "qualifications" are not identical, supplemental, or related to the position qualification requirements published by the Office of Personnel Management in Handbook X-118.

(g) "Appointment" means the delegation of authority to any employee to enter into, administer or terminate contracts, and make related determinations and findings. Appointment provisions are identified in 801.690-5.

(h) "Certification" means an evaluation that the candidate has the experience, education and training to perform properly the duties of a contracting officer.

(i) "Selection" means that an employee has been appointed or certified as a contracting officer. The "selection" process is not identical, supplemental or related to any process whereby an employee is placed into a position by any competitive action (merit promotion) or noncompetitive action (reassignment, reinstatement). Selection provisions are identified in 801.690-4.

(j) "Termination" means the revocation of contracting authority of a contracting officer by the designating official. Termination provisions are identified in 801.690-6.

(k) "Acquisition Training Program" (ATP) means a program designed to provide contracting officers with classroom knowledge to further develop their acquisition skills.

[52 FR 24010, June 26, 1987, as amended at 54 FR 31964, Aug. 3, 1989; 54 FR 40062, Sept. 29, 1989]

801.690-2 General.

(a) The VA COCP applies to all programs of the Department of Veterans Affairs except for those contracting officers appointed pursuant to the Inspector General Act (Pub. L. 95-452).

(b) A certification of appointment is not required for contracting officers designated in 801.670 who exercise special and limited delegations of authority.

(c) The COCP is based on three levels of authority:

(1) *Basic.* Expenditures up to and including $25,000 or the maximum order limitation for orders placed against established contracts.

(2) *Intermediate.* Expenditures up to and including $100,000 for negotiation and $1,000,000 for sealed bids.

(3) *Senior.* Unlimited.

[52 FR 24011, June 26, 1987, as amended at 54 FR 31964, Aug. 3, 1989]

801.690-3 Responsibility for administration of Contracting Officer Certification Program (COCP).

(a) *The Deputy Assistant Secretary for Acquisition and Materiel Management (A&MM).* The Deputy Assistant Secretary for A&MM is responsible for:

(1) Administering the COCP to ensure that the certification board evaluates, recommends acceptance, rejection, or termination of applicants at the Senior and Intermediate Levels according to the requirements of the COCP.

(2) Developing additional training and the level of certification as required by the COCP.

(3) Serving as the designating official, and in that capacity appoints or terminates contracting officers at the Senior and Intermediate Levels of authority.

(b) *Heads of contracting activities (HCA).* The HCA is responsible for:

(1) Implementing and maintaining an effective and efficient program for the procurement of personal property and nonpersonal services assigned to the activity.

(2) Establishing adequate controls to ensure compliance with applicable laws and regulations.

(3) Appointing or terminating appointments of contracting officers at the Basic Level within their activity. Each HCA will establish procedures for the appointment or termination of appointment of contracting officers at the Basic Level to include maintenance of records on individual training and experience, as well as appointment and termination actions.

(4) Recommending to the designating official the appointment or termination of appointment of contracting officers at the Intermediate and Senior Levels of authority based on candidate qualifications, as well as a valid organizational need.

(c) *Contracting Officer Certification Board (COCB).* The COCB may receive, evaluate, and recommend to the designating official, candidates for contracting officer positions at the Intermediate and Senior Levels. The board will be chaired by the Deputy Director, OA&MM, and membership will consist of:

(1) Director for Administration (VHS&RA) (or designee),

(2) Deputy Director, Office of Facilities (or designee),

(3) Acquisition Training Officer, and

(4) Additional members to be selected on an ad hoc basis depending on the organizational need for certified contracting officers.

(d) *Acquisition Training Officer (ATO).* The ATO in the OA&MM will serve as the Executive Secretary to the COCB. The ATO will coordinate all requests for certification with the COCB. Upon the decision by the Deputy Assistant Secretary for A&MM, the ATO will respond to the HCA with a copy of the appropriate action. In addition, the ATO will maintain records on the development and administration of the Contracting Officer Certification Program (COCP) as well as the records on individual training, certification and termination actions at the Intermediate and Senior Contracting Officer Level. The ATO will identify all records created and maintained and ensure they are scheduled for disposal by the Office of Acquisition and Materiel Management Records Officer.

[52 FR 24011, June 26, 1987, as amended at 54 FR 31964, Aug. 3, 1989; 54 FR 40062, Sept. 29, 1989]

801.690-4 Selection.

(a) Contracting officers (CO) shall be appointed only in those instances where a valid organizational need for certified personnel can be demonstrated. Such factors to be considered in making these assessments include complexity of work, volume of actions and organizational structure.

(b) Requests for appointment of contracting officers will be made in writing. Request for appointments at the Senior and Intermediate Level will be signed by the HCA and forwarded to the Acquisition Training Officer (90) for processing. The request for appointment will include at a minimum a justification of need, and a qualification statement for the candidate. Requests for appointment of HCAs as contracting officers will be made at one level above the head of the contracting activity.

(c) The COCB and HCAs (limited to Basic Level) will evaluate candidates for CO certifications based on training, experience, and performance, and consideration of academic education, in addition to meeting standards of ethical conduct and avoiding conflicts of interest. Minimum qualifications of contracting officers are based on a combination of training, experience, and performance with consideration of relevant academic credit or degrees earned. The following minimum requirements are established for designation of contracting officers:

(1) *Basic level.* (i) *Training*—Forty hours of basic acquisition or small purchase training that can be accomplished on the job in formalized courses of instruction. If on-the-job training is conducted, it must be documented for the record and include a brief description of the duties and responsibilities that comprised that training.

(ii) Experience—Six months of progressive work assignments and orientation within the last five years.

(iii) Performance—Satisfactory rating.

(iv) Education (desired)—High school diploma.

(2) *Intermediate level*—(i) *Training.*

(A) *ATP Level I*—Basic Acquisition.

(B) *ATP Level II*—Advanced Contract Administration.

(C) *ATP Level III*—Cost and Price Analysis.

ATP courses may include tests or other assessments to indicate what information has been learned by the student. An assessment will then be made to determine if additional formal or on-the-job training is needed.

(ii) *Experience.* Two years of progressive work assignments in an acquisition related field leading to broader technical ability within the last five years.

(iii) *Performance.* Satisfactory rating.

(iv) *Education (desired).* Associate degree.

(3) *Senior level.* (i) Training.

(A) *ATP Level I*—Fundamentals of Acquisition.

(B) *ATP Level II*—Advanced Contract Administration.

(C) *ATP Level III*—Cost and Price Analysis.

(D) *ATP Level IV*—Contract Negotiation.

ATP courses may include tests or other assessments to indicate what information has been learned by the student. An assessment will then be made to determine if additional formal or on-the-job training is needed.

(ii) *Experience.* Three years of progressive assignments in an acquisition related field and broad technical ability within the last five years.

(iii) *Performance.* Satisfactory rating.

(iv) *Education (desired).* Bachelor degree.

(d) Other training courses may be substituted for the prescribed core curriculum provided that the training meets equivalent content and difficulty per course. Recommending officials must fully document and justify equivalent courses when recommending candidates for appointment as contracting officers. The COCB will review and determine if equivalent courses may be appropriately substituted. HCAs are responsible for providing their subordinates with advice and assistance necessary to complete required training.

(e) Candidates who achieve additional academic credit beyond the desired education level may be eligible to receive credit toward experience for this additional academic credit. Substitutions of this nature must be fully justified and documented by the recommending official and forwarded to the COCB for evaluation and appropriate action. Candidates will receive a maximum credit of 1 year of experience when substitutions are approved for the Intermediate and Senior Level. A maximum credit of 6 months may be approved by the HCA for the Basic Level.

(f) Candidates who do not meet the minimum qualifications established in this section, may be granted interim appointments in accordance with 801.690-7.

(g) The Privacy Act of 1974 applies to the information collected during the selection and appointment of contracting officers.

[52 FR 24011, June 26, 1987, as amended at 54 FR 31965, Aug. 3, 1989]

801.690-5 Appointment.

(a) The recommending official may recommend candidates for appointment as contracting officers to the designating official. Only the Deputy Assistant Secretary for A&MM or the HCA is authorized to sign the Standard Form 1402, Certification of Appointment.

(b) Specific limitations imposed upon the authority of contracting officer shall be set forth in certificates of appointment or otherwise conveyed in writing to appoint contracting officers.

(c) Appointment of COs at specific levels does not preclude imposition of administrative reviews, approvals, or other limitations for program management purposes.

[52 FR 24012, June 26, 1987, as amended at 54 FR 31965, Aug. 3, 1989]

801.690-6 Termination.

(a) The designating official may revoke the appointment of a contracting officer at any time after evaluation of written recommendations by an HCA or other management officials based on:

(1) The fact that the need for the appointment no longer exists;

(2) Personnel actions such as resignation or retirement;

(3) Cause. (Cause covers such areas as, e.g., unsatisfactory performance, official misconduct pending criminal or administrative investigations, failure to meet training requirements.)

(b) Situations involving termination of contracting authority of contracting officers for cause should be discussed with the servicing Personnel Office to determine impact, if any, on the employee's continued employment.

[54 FR 31965, Aug. 3, 1939]

801.690-7 Interim appointment provisions.

(a) Individuals who do not meet all minimum qualifications as described in 801.690-4, may be appointed on an interim basis to ensure availability of procurement support. Requests to the designating official for interim appointments shall include information on the candidate's training, experience, performance, education, and justification for the interim appointment. All minimum training requirements shall be scheduled for individuals issued interim appointments and completed within a reasonable period of time. At least two required courses or equivalents will normally be completed each year after the date of appointment. Failure to complete minimum training requirements within the time frame may result in the loss of the interim appointment.

(b) If training requirements are met during the interim appointment period through the ATP, a permanent warrant may be issued by the designating official upon satisfactory completion of all the required courses. Where equivalent courses have been completed, appropriate documentation (copies of course certificates) must be submitted before a permanent warrant can be issued.

(c) Instances that may require the use of interim appointments may include, but are not limited to the following:

(1) Organization changes;

(2) Sudden extreme increases in the number of procurement requests; and

(3) New hires or promotions into GS-1102 series.

(d) Interim appointments shall normally not exceed a 2 year period.

[52 FR 24012, June 26, 1987, as amended at 54 FR 31965, Aug. 3, 1989]

801.690-8 Distribution of SF 1402, Certificate of Appointment

(a) The original SF 1402, Certificate of Appointment, shall be provided to the appointed contracting officer and displayed at the contracting officer's duty station.

(b) A copy of the certificate will be filed in the delegation of authority file and another copy will be furnished to the fiscal activity.

(c) Each certificate will be serially numbered.

[54 FR 31965, Aug. 3, 1989]

801.690-9 Post appointment maintenance of certifications. [Reserved]

PART 802—DEFINITIONS OF WORDS AND TERMS

Subpart 802.1—Definitions

802.100 Definitions

(a) In VA, "head of the contracting activity" means the Director, Acquisition Management Service, Central Office; Deputy Assistant Secretary for Facilities, Central Office; Director, Building and Supply Service, Central Office; Director, Publications Service, Central Office; Director, Monument Service, Central Office; Director, Vocational Rehabilitation and Education Service, Central Office; Director, Loan Guaranty Service, Central Office; Director, VA Marketing Center; Chief, Supply Service, at a field facility; and the Director, Regional Office.

(b) Senior Procurement Executive—The Assistant Secretary for Acquisition and Facilities (005) is designated the Senior Executive for VA.

(38 U.S.C. 210 and 40 U.S.C. 486(c))

[52 FR 24013, June 26, 1987, as amended at 52 FR 28559, July 31, 1987; 54 FR 40062 Sept. 29, 1989]

PART 803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 803.1—Safeguards

Sec.
803.101 Standards of conduct.
803.101-3 Department regulations.
803.104 Procurement integrity.
803.104-5 Disclosure of proprietary and source selection information.
803.104-9 Certification requirements.
803.104-11 Processing violations or possible violations.
803.104-12 Ethics program training requirements.

Subpart 803.2—Contractor Gratuities to Government Personnel

803.203 Reporting suspected violations of the Gratuities clause.

Sec.

Subpart 803.3—Reports of Identical Bids and Suspected Antitrust Violations

803.301 General.
803.303 Reporting suspected antitrust violations.

Subpart 803.4—Contingent Fees

803.408 Evaluation of the SF 119.
803.408-1 Responsibilities.
803.409 Misrepresentations or violations of the Convenant Against Contingent Fees.

Subpart 803.5—Other Improper Business Practices

803.502 Subcontractor kickbacks.

Subpart 803.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

803.603 Responsibilities of the contracting officer.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12592, Mar. 29, 1984, unless otherwise noted.

Subpart 803.1—Safeguards

803.101 Standards of conduct.

803.101-3 Department regulations.

(a) Standards of conduct for all VA employees, including contracting officials, are found in 38 CFR Part O. From time to time supplementing guidance regarding Agency-authorized exceptions to FAR 3.101-2 and disciplinary measures for persons violating the standards of conduct, may be issued by the Secretary or the designated VA Ethics Officer. Heads of contracting activities will ensure that all employees are cognizant of the applicable regulations.

(b) Requirements for employee financial disclosure are contained in 38 CFR Part O, Subpart D. Generally contracting officers and all supervisory contracting officials must file financial disclosure statements.

(c) *Ethics in Government Act.* Former employees are not specifically prohibited under section 207 of Title 18, United States Code, from acting as consultants for the Department of Veterans Affairs. However, former employees are prohibited, for certain periods of time, from representing or otherwise acting as agents of other parties for the purpose of obtaining Government contracts.

(d) The certification in 852.203-70 will be made a part of all solicitations.

803.104 Procurement integrity.

EDITORIAL NOTE: At 55 FR 25848, June 25, 1990, § 803.104 was suspended for a one-year period beginning December 1, 1989, and ending November 30, 1990.

803.104-5 Disclosure of proprietary and source selection information.

(a) Contracting officers are authorized to designate persons or classes of persons to have access to proprietary and source selection information pertaining to procurements for which they are responsible. Individuals, or classes of individuals, who have been provided access for a specific procurement will be listed in the contract file.

(b) Contracting officers will only release source selection or proprietary information when access is necessary to the conduct of the procurement and only to procurement officials who have a need to know and who have verified that they have certified their familiarity with the Office of Federal Procurement Policy Act Amendments of 1988 in accordance with FAR 3.104-12. (Clerical personnel or other persons who may require access to proprietary information and who are not procurement officials must be included in the list identified in paragraph (a)). Furthermore, such persons must be informed of their obligation not to disclose such information, since the nondisclosure provision of the Procurement Integrity statute applies to nonprocurement officials as well.)

[54 FR 47086, Nov. 9, 1989]

EDITORIAL NOTE: At 55 FR 25848, June 25, 1990, § 803.104-5 was suspended for a one-year period beginning December 1, 1989, and ending November 30, 1990.

803.104-9 Certification requirements.

The certification required by FAR 3.104-6(b) regarding the certification of procurement officials who leave Government during a procurement will be made through normal personnel clearance procedures and will be maintained in the official personnel file in lieu of the contract file. (This is a FAR deviation authorized in accordance with FAR Subpart 1.4 and VAAR Subpart 801.4).

[54 FR 47087, Nov. 9, 1989]

Editorial Note: At 55 FR 25848, June 25, 1990, § 803.104-9 was suspended for a one-year period beginning December 1, 1989, and ending November 30, 1990.

803.104-11 Processing violations or possible violations.

(a) If the contracting officer determines that the reported violation or possible violation has no impact upon a pending award, the contracting officer will obtain the concurrence of the Head of the Contracting Activity (HCA) prior to making award. The contracting officer will provide all necessary supporting data to the HCA. All such reported violations will be transmitted to the Office of General Counsel (025) through the Deputy Assistant Secretary for Acquisition and Material Management (93). The HCA will also inform his or her senior management if the reported violation or possible violation involves a VA employee.

(b) When the contracting officer concludes that the violation or possible violation impact contract award or the contract itself, the contracting officer will withhold award and promptly notify the HCA. The HCA shall be provided all relevant information with recommendations from the contracting officer. The HCA is responsbile for taking the appropriate actions specified in FAR 3.104-11(b) and making the determinations specified in FAR 3.104-11(c). As part of the deliberations, the HCA should utilize all resources available, including legal counsel, IG investigative services, and Acquisition Management Service (93). The HCA is encouraged to seek advice from these offices prior to making the final determination as to the appropriate course of action.

(c) The final report and determination made in accordance with FAR 3.104-11 (b) and (c) and all supporting documentation will be transmitted to the General Counsel (025) through the Deputy Assistant Secretary for Acquisition and Material Management (93).

[54 FR 47087, Nov. 9, 1989]

Editorial Note: At 55 FR 25848, June 25, 1990, § 803.104-11 was suspended for a one-year period beginning December 1, 1989, and ending November 30, 1990.

803.104-12 Ethics program training requirements.

(a) Certifications required by FAR 3.104-12(a)(2) will be filed in the procurement official's Official Personnel File (OPF). Contracting officers may request that procurement officials provide confirmation that they have certified and may request copies of the actual certification as part of the confirmation process.

(b) For acquisition exceeding $25,000, the office requesting contract action will provide a list of all procurement officials for the procurement at the time the request is submitted for procurement action. The requesting organization will certify that all such listed procurement officials have certified their familiarity in accordance with FAR 3.104-12(a)(2) and that those certifications have been included in the respective OPFs. The requesting organization is also responsible for updating the list as additional procurement officials are added, or as procurement officials are removed.

(c) In accordance with Office of Personnel and Labor Relations' directives, recruitment and promotion actions will identify those positions having potential for procurement official functions and will require certification from the selectee.

[54 FR 47087, Nov. 9, 1989]

Editorial Note: At 55 FR 25848, June 25, 1990, § 803.104-12 was suspended for a one-year period beginning December 1, 1989, and ending November 30, 1990.

Subpart 803.2—Contractor Gratuities to Government Personnel

803.203 Reporting suspected violations of the Gratuities clause.

(a) Suspected violations of the Gratuities Clause will be reported to the head of the contracting activity through the contracting officer. The head of the contracting activity will confirm that violations are evident and that reporting these violations to officials designated in paragraph (b) would be warranted.

(b) When violations of the Gratuities Clause warrant actions described in FAR 3.204(c) the head of the contracting activity will request instructions from the VA General Counsel (025) through the Director, Office of Procurement and Supply (90).

Subpart 803.3—Reports of Identical Bids and Suspected Antitrust Violations

803.301 General.

Executive Order 10936 of April 1961 requiring reporting of identical bids to the Attorney General has been revoked by Executive Order 12430 of July 1983. Identical bids and other suspected antitrust violations will be reported in the manner prescribed in FAR 3.303 and this subpart.

803.303 Reporting suspected antitrust violations.

Instances of possible antitrust violations will be reported by procurement activities in accordance with FAR 3.303 to the Director, Office of Procurement and Supply (90) for review and submission to the General Counsel, who will determine whether or not to submit the case to the Attorney General.

Subpart 803.4—Contingent Fees

803.408 Evaluation of the SF 119.

803.408-1 Responsibilities.

When determining an appropriate course of action with respect to information furnished on a Standard Form 119, Statement of Contingent or Other Fees, the head of the contracting activity will review the contracting officer's recommendations. The review by the head of the contracting activity shall be documented on the contract file.

803.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) Suspected violations of the Covenant Against Contingent Fees shall be reported to the head of the contracting activity for evaluations as prescribed in FAR 3.408-2.

(b) Before taking any administrative action the heads of the contracting activity shall consult with their respective VA District Counsels. Contracting officers in Central Office shall consult with the Office of the General Counsel.

[49 FR 12592, Mar. 29, 1984, as amended at 50 FR 791, Jan. 7, 1985]

Subpart 803.5—Other Improper Business Practices

803.502 Subcontractor kickbacks.

Suspected violations of the Anti-kickback Act will be reported to the Office of the General Counsel.

Subpart 803.6—Contracts With Government Employees Or Organizations Owned or Controlled by Them

803.603 Responsibilities of the contracting officer.

Excepting those contracts which pertain to the sale of manual arts and occupational therapy products, Department of Veterans Affairs contracting officer shall, prior to entering into a contract with Government employees or business concerns substantially owned or controlled by Government employees, make the written determinations required by FAR 3.603.

PART 804—ADMINISTRATIVE MATTERS

Subpart 804.1—Contract Execution

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

804.101 Contracting officer's signature.

(a) Contracting officers will personally sign all contracts, changes thereto and contract enforcement correspondence in accordance with FAR 4.101. The signing of the contractual documents will not be accomplished by facsimile stamps.

(b) In the event a contracting officer's name and title has been typed, stamped or printed on the contract and the contracting officer is not available to sign the contract, a designee may sign for the contracting officer. Such designee must be a contracting officer as specified in 801.602 and must have specific contracting authority to cover the contract to be signed.

[49 FR 12592, Mar. 29, 1984]

SUBCHAPTER B—ACQUISITION PLANNING

PART 805—PUBLICIZING CONTRACT ACTIONS

Subpart 805.2—Synopses of Proposed Contracts

Sec.
805.202 Exceptions.
805.205 Special situations.
805.207 Preparation and transmittal of synopses.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 805.2—Synopses of Proposed Contracts

805.202 Exceptions.

In accordance with FAR 5.202, the contract actions in 806.302-5 do not require synopsizing. This exemption will be exercised at the discretion of the contracting officer. This exemption does not affect the justification and approval requirements specified in 806.303.

[51 FR 23066, June 25, 1986 and 52 FR 28559, July 31, 1987]

805.205 Special situations.

To facilitate the use of the alternative procedure in FAR 5.205(c)(2), contracting officers are hereby delegated authority to procure paid advertising in a daily newspaper circulated in the local area, for the purpose of publicizing a proposed procurement of architect-engineer services expected not to exceed $10,000.

[49 FR 12592, Mar. 29, 1984]

805.207 Preparation and transmittal of synopses.

(a) Synopses of proposed procurements will be forwarded to the Department of Commerce for publication in the Commerce Business Daily (CBD) via teletype VA Data Transmission System (VADATS), or mailed.

(1) For this purpose the CBD synopsis form will be completed in accordance with the instructions on the reverse side of that form and forwarded to the teletype office with completed Standard Form 14, Telegraphic Message, as a cover transmittal. "See attached" will be noted on the SF 14 in the block marked "Message to be transmitted."

(2) Routing symbol "RUCHODY" will be used in transmitting the material to the Department of Commerce.

(b) At such time as an architect-engineer evaluation board is ready to advertise for architect-engineer services, it must establish the geographic area within which architect-engineer firms (including joint ventures) will be considered. The area determined must be large enough to assure selection of three to five firms highly qualified for the particular project involved, but not so large as to make the evaluation process unduly burdensome.

(1) For large projects, the area will generally be Statewide, but may be limited to sections of States or the metropolitan areas. Where there is a scarcity of qualified firms, the area of consideration may include more than one State. In addition, special consideration may be given to projects located near State lines, particularly where the economic, cultural and social centers for the worksite are located across the State boundary in a contiguous State.

(2) For small projects, the geographic area of consideration is appropriately local, but will be wide enough to assure the selection of at least three highly qualified firms.

(3) Special problems of evaluation and of contract administration arise with respect to joint-venture applications representing numerous firms from all over the nation organizing with a small local firm not otherwise qualified. Accordingly, notices may contain a statement that "Joint-venture participation will be considered and evaluated on the demonstrated interdependency of each joint-venture member on the other, which makes that union a viable design force for this particular project."

[49 FR 12592, Mar. 29, 1984, as amended at 50 FR 791, Jan. 7, 1985; 51 FR 23066, June 25, 1986; 52 FR 28559, July 31, 1987; 54 FR 40063, Sept. 29, 1989]

PART 806—COMPETITION REQUIREMENTS

Subpart 806.3—Other Than Full and Open Competition

Sec.

806.302-3 Industrial mobilization; or experimental development, or research work.
806.302-5 Authorized or required by statute.
806.302-7 Public interest.
806.303 Justifications.
806.303-1 Requirements.
806.304 Approval of the justification.

Subpart 806.4—Sealed Bidding and Competitive Proposals

806.401 Sealed bidding and competitive proposals.

Subpart 806.5—Competition Advocates

806.501 Requirement.
806.502 Duties and responsibilities.
806.570 Planning and reporting requirements.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

SOURCE: 51 FR 23066, June 25, 1986 (interim), and 52 FR 28559, July 31, 1987 (final), unless otherwise noted.

Subpart 806.3—Other Than Full and Open Competition

806.302-3 Industrial mobilization; or experimental, development, or research work.

Research authorized to be conducted by the Department of Veterans Affairs in accordance with the provisions of title 38, U.S. Code, will be negotiated under the authority of 41 U.S.C. 253(c)(3) (except prosthetics research authorized by 38 U.S.C. 4101, will be negotiated under the authority of 41 U.S.C. 253(c)(5), regardless of the dollar amount. Such acquisitions require justifications and approvals required by sections 806.303 and 806.304.

806.302-5 Authorized or required by statute.

(a) Scarce Medical Specialist contracts negotiated under the authority of 38 U.S.C. 4117 are approved for other than full and open competition *only* when such contracts are with institutions affiliated with the Department of Veterans Affairs pursuant to 38 U.S.C. 4101. The justification and approval requirements of 806.303 and 806.304 are still applicable.

(b) Sharing contracts negotiated under 38 U.S.C. 5053 are approved for other than full and open competition. The justification and approval requirements of 806.303 and 806.304 are still applicable.

(c) Various other sections of Title 38, United States Code, authorize the Secretary to enter into certain contracts, and certain types of contracts, without regard to any other provision of law. The justification and approval requirements specified in 806.303 and 806.304 are still applicable. VA contracting officers entering into contracts using other than competitive procedures for any of the following items or services, estimated to cost in excess of the small purchase limitation, will cite, in addition to 41 U.S.C. 253(c)(5), the appropriate section of Title 38, United States Code, as their authority to do so:

(1) Contracts for orthopedic and prosthetic appliances and related services including research. 38 U.S.C. 5023.

(2) Contracts to purchase or sell merchandise, equipment, fixtures, supplies and services for the operation of the Veterans Canteen Service. 38 U.S.C. 4202.

(3) Contracts or leases for the operation of parking facilities established under authority of 38 U.S.C. 5009(b)(2), provides that—

(i) The establishment, operation and maintenance of such facilities have been authorized by the Secretary or designee; and

(ii) The facility director determines in writing that operation by contract or lease is both desirable and warranted. 38 U.S.C. 5009(b)(2).

(4) Contracts for laundry and other common services such as the purchase of steam, may be noncompetitively negotiated with non-profit, tax-exempt, educational, medical, or community institutions, when specifically approved by the Secretary or designee and when such services are not reasonably available from private commercial sources. 38 U.S.C. 5022(c).

(5) Contracts or agreements with public or private agencies for services or translators. 38 U.S.C. 213.

(6) Contracts for nursing home care. 38 U.S.C. 620.

[51 FR 23066, June 25, 1986, and 52 FR 28559, July 31, 1987, as amended at 52 FR 28560, July 31, 1987; 54 FR 40063, Sept. 29, 1989]

806.302-7 Public interest.

Use of 41 U.S.C. 253(c)(7) to support contract award using other than full and open competition will require a D&F prepared in accordance with FAR Subpart 1.7 and VAAR Subpart 801.7 and signed by the Secretary. The D&F will be prepared by the contracting officer and submitted by the head of contracting activity (Subpart 802.1) to the Agency Competition Advocate (806.501). The submission will include:

(a) The date of expected contract award (*Note: Congress must be notified 30 days prior to award*), and

(b) A justification prepared by the contracting officer in accordance with 806.303.

806.303 Jusifications.

806.303-1 Requirements.

Generally the requester of the goods or services will provide the necessary technical and support data justifying the use of other than full and open competition. Such requester, and as necessary the requester's technical personnel, will certify to the completeness and accuracy of the support data provided.

806.304 Approval of the justification.

(a) Approvals of justifications as specified in FAR 6.304, prepared in accordance with FAR 6.303 and 806.303 will be approved as follows:

(1) For a proposed contract not exceeding $100,000, one contracting level above the contracting officer (see Subpart 801.6). However, if the contracting officer is also the head of the contracting activity approval will be made by:

(i) The medical center director for acquisitions at Veterans Health Services and Research Administration (VHS&RA) medical centers, or

(ii) The Agency Competition Advocate (806.501(a)) in all other cases.

(2) For a proposed contract over $100,000 but not exceeding $1,000,000, by the Contracting Activity Competition Advocate (806.501(b)). However, if the Contracting Activity Competition Advocate is also the contracting officer, approval will be made by:

(i) The medical center director for acquisitions at VHS&RA medical centers, or

(ii) The Agency Competition Advocate in all other cases.

(3) For a proposed contract over $1,000,000 but not exceeding $10,000,000 by the Agency Competition Advocate (806.501(a)).

(4) For a proposed contract over $10,000,000 by the Senior Procurement Executive (See 802.100).

(b) Class justifications as specified in FAR 6.304(c), will be approved by the Agency Competition Advocate regardless of dollar amount.

[51 FR 23066, June 25, 1986, and 52 FR 28559, July 31, 1987, as amended at 54 FR 40063, Sept. 29, 1989]

Subpart 806.4—Sealed Bidding and Competitive Proposals

806.401 Sealed bidding and competitive proposals.

Contracting officers shall solicit sealed bids if the contract is expected to exceed the small purchase limitation or expected to exceed $1,000 for contracts made for repairs to property acquired by VA under 38 U.S.C. Chapter 37 and the criteria in FAR 6.401(a) are met. The contract file shall include any findings by the contracting officer that sealed bidding is not appropriate.

[51 FR 23066, June 25, 1986, and 52 FR 28559, July 31, 1987, as amended at 54 FR 40063, Sept. 29, 1989]

Subpart 806.5—Competition Advocates

806.501 Requirement.

(a) The Deputy Director, Acquisition and Materiel Management, is designated as the Agency Competition Advocate.

(b) The Director, VA Marketing Center, or designee, will serve as the Competition Advocate for the Center. Each head of the contracting activity (see Subpart 802.1) or designee will serve as the Contracting Activity Competition Advocate in all other cases.

[51 FR 23066, June 25, 1986, and 52 FR 28559, July 31, 1987, as amended at 54 FR 40063, Sept. 29, 1989]

806.502 Duties and responsibilities.

In addition to the responsibilities identified in FAR 6.502(a), the Agency Competition Advocate will coordinate the competition advocacy program as it is implemented at all VA contracting activities. The Agency Competition Advocate will:

(a) Establish program guidelines to be used by contracting activity competition advocates;

(b) Assist contracting activity competition advocates with obstacles to promoting competition;

(c) Utilize supply technical surveys, other facility reports, and the Federal Procurement Data System to monitor contracting activity compliance with the advocacy program;

(d) Prepare the annual report to Congress required by section 21 of the Office of Federal Procurement Policy Act as amended by the Competition in Contracting Act; and

(e) Consolidate the reporting data required by 806.570.

806.570 Planning and reporting requirements.

(a) *General.* In order to provide required data to the Senior Procurement Executive and to consolidate the annual report to Congress, each Contracting Activity Competition Advocate must report their respective actions and accomplishments. While the report must include narrative description of the individual competition plans and the obstacles encountered, it is important that the report be quantified to the maximum extent feasible.

(b) *Competition Plan.* Each Contracting Activity Competition Advocate shall develop an initial Competition Plan for their respective activities by August 15, 1985. The plan should be formally incorporated in the internal operating procedures of the facility or organization in which the contracting activity is located. It is essential that the plan be endorsed and supported by top level management and be clearly understood by the services and offices that the contracting activity support. As a minimum, the plan shall include:

(1) The appoval requirements for other than full and open competition specified in FAR 6.304;

(2) A description of the synopsizing requirements contained in FAR Subpart 5.2 in order that the necessity for Advance Procurement Planning is fully understood;

(3) A description of how the Competition Plan should be integrated into Advance Procurement Planning;

(4) Identification of any known obstacles to competition and a proposal for overcoming them;

(5) A method for otherwise increasing competition for contracts on the basis of cost and other significant factors.

(c) *Reporting requirements.* (1) Each Competition Advocate will prepare a report on the actions taken to promote competition in the preceding fiscal year. The report will be transmitted to reach the Office of Information Management and Statistics (722) by December 15 of each year. The Office of Information Management and Statistics will compile and provide the entire report to the Agency Competition Advocate. The report will include the following:

(i) The number and dollar value of all contracts proposed to be awarded with other than full and open competition reviewed in accordance with 806.304(a)(1) (less than $100,000).

(ii) The number and dollar value of all contracts less than $100,000 approved for other than full and open competition in accordance with 806.304(a)(1).

(iii) The number and dollar value of proposed contracts to be awarded with other than full and open competition reviewed by the Contracting Activity Competition Advocate (contracts between $100,000 and $1,000,000, 806.304(a)(2)).

(iv) The number and dollar value of approved contracts to be awarded with other than full and open competition which were approved by the Contracting Activity Competition Advocate.

(v) Narrative description, and where possible statistics, describing the success in promoting full and open competition.

(vi) Identification of barriers to full and open competition and plans for overcoming those barriers, for the current fiscal year.

(2) By January 15 of each year the Agency Competition Advocate will prepare the annual report to Congress, based primarily upon the summary of individual competition advocate reports. The Congressional report will include, as a minimum:

(i) A specific description of all actions that the VA intends to take during the current fiscal year to increase competition and reduce the number and dollar value of noncompetitive contracts.

(ii) A summary of the activities and accomplishments of the agency competition advocates during the previous fiscal year. The Congressional report will be submitted for the signature of the Secretary through the Senior Procurement Executive.

(3) Annual Report on Competition, Reports Control Symbol 90-0658 has been established for this report.

PART 807—ACQUISITION PLANNING

Subpart 807.3—Contractor Versus Government Performance

Sec

807.300 Scope of subpart.
807.302 General.
807.304 Procedures.
807.304-72 Requirement for second commercial source for A-76 solicitations.
807.304-73 Bid opening/receipt of proposals.
807.304-75 Bid acceptance.
807.304-76 Contract effective date.
807.304-77 Right of first refusal.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

SOURCE: 53 FR 43210, Oct. 26, 1988, unless otherwise noted.

Subpart 807.3—Contractor Versus Government Performance

807.300 Scope of subpart.

This subpart prescribes basic procedures and principles to be followed in performing the contracting aspect of the OMB Circular A-76 cost comparison process.

807.302 General

(a) Pursuant to 38 U.S.C. 5010(c)(2), all A-76 cost comparisons of commercial and/or industrial activities performed by the VA Veterans Health Services and Research Administration (VHS&RA) at VA medical facilities will be based upon comparative cost of the first five years of contract performance. Consequently, such cost comparisons will specify contractual commitments for one year plus four one-year renewal options (see FAR 17.2). (Other VA administrations and staff offices may use contractual commitments for a minimum of one year with two one-year renewal options or a maximum of one year with four one-year renewal options.) Furthermore, 38 U.S.C. 5010(c)(4) prescribes a cost comparison methodology which differs from that contained in OMB Circular A-76. In order that bidders/offerors are made aware of the cost comparison methodology which will be applied, the provision in 852.207-72, Cost Comparison Criteria—VA Medical Facilities, will be included in solicitations for cost comparisons of VA VHS&RA activities which are currently performed at VA medical facilities by VA employees.

[53 FR 43210, Oct. 26, 1988, as amended at 54 FR 40063, Sept. 28, 1989]

807.304 Procedures.

807.304-72 Requirement for second commercial sources for A-76 solicitations.

(a) Pub. L. 100-322 established a requirement that for A-76 cost comparisons conducted at health-care facilities, a contract can only be awarded if the A-76 solicitation results in responsive bids/offers from at least "two responsible, financially autonomous bidders (offerors)." Consequently, A-76 solicitations for functions at VA

best copy available
pages tightly bound

health-care facilities will contain the provision specified in 852.207-71.

(b) The general policy of VA, except as identified in paragraph (a) of this section, is to proceed with A-76 cost comparison if one or more responsive and responsible bidder/offerors respond to an A-76 solicitation. However, if justified and approved in accordance with this section, an A-76 solicitation may require that two responsive and responsible bidders/offerors respond to the solicitation and will use the appropriate provision specified in 852.207-71. If the requirement for two bidders is approved and used, the cost comparison process will be terminated and the solicitation cancelled unless two bids/offers are received.

(c) The justification for use of a second commercial source requirement shall address each of the following criteria:

(1) Criticality of the activity under study to the mission of the facility and the degree of adverse impact on facility from disruption in services.

(2) Amount of resources needed (facility and capital investment, time frame, and costs attributed to obtaining adequate staff) to convert the service back to in-house operation.

(3) The availability and feasibility of obtaining the service from other VA facilities or other Government facilities.

(4) Evaluation of anticipated bidder's/offeror's essential qualification characteristics.

(5) Availability of other commercial sources in close geographic proximity to the facility.

(d) Requests to use the provisions specified in 852.207-71 will be prepared by the director (or head of the requesting element for activities consisting of less than 10 FTEE) of the facility in which the commercial activity presently exists. The request will, at a minimum, address the criteria in paragraph (b) of this section and will be forwarded for approval as follows:

(1) For A-76 solicitations comparing in-house activities consisting of less than 10 FTEE, approval is delegated to the facility director.

(2) For A-76 solicitations comparing in-house activities consisting of 10 FTEE or more, approval will be made by the respective administration head or staff office director, or their designee.

(e) A copy of each approval granted pursuant to paragraphs (c) and (d) of this section will be forwarded to Director, Office of Program Analysis and Evaluation (07), through the respective adminisration head or staff office director, within five working days of such approval.

[53 FR 43210, Oct. 26, 1988, as amended at 54 FR 40063, Sept. 29, 1989]

807.304-73 Bid opening/receipt of proposals.

The date established for bid opening or receipt of proposals will normally be 90 days after sending the request for publication to the Commerce Business Daily (CBD) (65 days after issuing the solicitation).

807.304-75 Bid acceptance.

Bid acceptance shall be 90 days from bid opening/receipt of proposals in order to accommodate the time necessary to evaluate bids/offers, finalize the cost comparison and process any appeals. Contracting officers will insert "90 days" in FAR clause 52.214-15.

807.304-76 Contract effective date.

(a) A transition from in-house performance to contract requires a period of time from contract award to beginning of contract performance (contract effective date). This time is necessary to allow for personnel adjustments, e.g., right of first refusal process, and to allow a reasonable period for the contractor to make necessary resource reallocations. The contract effective date should be carefully considered in conjunction with the A-76 Task Group and must be specified in the solicitation.

(b) Although outplacement planning to minimize the effect of any necessary reduction in force should be initiated in advace of bid opening/receipt of proposals as prescribed by Office of Personnel and Labor Relations, there are also employee and labor organization reduction-in-force notice requirements which must be satisfied.

(c) When bargaining unit employees will be affected, facility officials also should review and comply with any employee or labor organization notice requirements in applicable negotiated agreements.

807.304-77 Right of first refusal.

(a) In addition to the Right of First Refusal clause specified in FAR 52.207-3, the contracting officer will include the clause "Report of Employment Under Commercial Activities" in 852.207-70. This clause is primarily intended to verify that the contractor is meeting its obligation to provide adversely affected Federal workers the first opportunity for employment openings, for which they qualify, created by the contract.

(b) The Report of Employment Under Commercial Activities clause is also prescribed to avoid inappropriate severance payment. In order to implement the clause, the contracting officer (or Contracting Officer's Technical Representative (COTR)) must first obtain a list from the servicing personnel office of Federal employees, including their Social Security numbers, who will be adversely affected as a result of the anticipated contract. The list should be requested as soon as a preliminary determination is made to contract out a function subject to A-76. (Contracting officers may designate a COTR to coordinate the information and reporting requirements.)

PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Sec.

808.001 Priorities for use of Government supply sources.

Subpart 808.3—Acquisition of Utility Services

808.304-1 GSA long-term contracts.
808.304-2 GSA area-wide contracts.
808.304-4 Consolidated purchase, joint use, or cross-service.
808.304-5 Agency acquisition.
808.307-2 Precontract review by GSA.
808.307-70 Alternative precontract review by VA.

Sec.

Subpart 808.4—Ordering From Federal Supply Schedules

808.401 General.
808.404-1 Mandatory use.
808.404-3 Requests for waivers.
808.405-5 Termination for default.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Source: 49 FR 12593, Mar. 29, 1984, unless otherwise noted.

808.001 Priorities for use of Government supply sources.

(a) Procurement will be effected from the following sources in the descending order of priority as indicated herein:

(1) VA excess.

(2) VA supply depot stock.

(3) Other government agencies excess.

(4) Federal Prison Industries.

(5) Procurement list of products available from the Committee for Purchase from the Blind and Other Severely Handicapped.

(6) GSA stock and other Government agency inventory.

(7) VA decentralized contracts.

(8) Mandatory Federal Supply Schedule contracts.

(9) Optional use Federal Supply Schedule contracts.

(10) Commercial concerns, educational, or nonprofit institutions, as applicable.

(b) *Public exigency.* A source lower in priority may be utilized in a public exigency as defined in FAR 6.302-2 and in Federal Property Management Regulation 41 CFR 101-25.101-5. Justification for each deviation must be included in the procurement file.

(c) *Eligible Beneficiaries.* When it is determined that a therapeutic benefit to eligible beneficiaries will result from personal selection of shoes, clothing and incidentals, acquisition from the Veterans Canteen Service or commercial sources is authorized. When dress shoes similar to Federal Prison Industries, Inc., Style No. 86-A are purchased from commercial sources, FPI clearance No. 1206 will be cited on the purchase document.

[49 FR 12593, Mar. 29, 1984, as amended at 51 FR 23068, June 25, 1986; 52 FR 28559, July 31, 1987; 54 FR 40063, Sept. 29, 1989]

Subpart 808.3—Acquisition of Utility Services

808.304-1 GSA long-term contracts.

(a) If the contracting officer determines that a GSA long-term contract may be justified in accordance with the provisions outlined in FAR 8.304-1, GSA will be requested to negotiate a long-term contract.

(b) The request will be submitted to General Services Administration, Public Building Service, Public Utilities Service Division (PPU), Washington, DC 20405. It will state the reason a long-term contract is believed justified and will include the following information:

(1) Copy of existing contract or agreement.

(2) Copies of all current rate schedules.

(3) Record of past 12 months usage, preferably in the form of copies of bills or invoices.

(4) Statement regarding any anticipated or planned future changes.

(5) Point and characteristics of delivery.

(6) Statement covering equipment or connection requirements and ownership.

(7) Names and addresses of all suppliers, both regulated and unregulated, of the required service.

[49 FR 12593, Mar. 29, 1984, as amended at 52 FR 28560, July 31, 1987]

808.304-2 GSA area-wide contracts.

When a GSA area-wide contract for the required utility service is available, utility services will be procured thereunder as provided by FAR 8.304-2, unless special rates can be negotiated under the area-wide contract or a separate contract. When provided in the area-wide contract, connection agreements may also be obtained thereunder.

808.304-4 Consolidated purchase, joint use, or cross-service.

If a consolidated purchase, joint use, or cross-service agreement would be advantageous, an appropriate memorandum of understanding will be entered into, as provided by FAR 8.304-4. If assistance is required, requests will be forwarded to GSA.

808.304-5 Agency acquisition.

When either GSA area-wide contracts, GSA long-term contracts, consolidated purchase, joint use, or cross-service agreements are not available, the contracting officer will obtain required utility services and/or connections as provided in FAR 8.304-5.

808.307-2 Precontract review by GSA.

Except as provided in FAR 8.307-3, proposed utility procurements meeting the criteria of FAR 8.307-1 will be forwarded to the General Services Administration, Public Building Service, Public Utilities Service Division (PPU), Washington, DC 20405.

[52 FR 28560, July 31, 1987]

808.307-70 Alternative precontract review by VA.

Prior review of contracts for utility connections and contracts for combined utility connections and services consummated by the designated contracting officer(s) in Central Office will be made by technical and administrative personnel in the Office of Facilities, when required by FAR 8.307-1.

[49 FR 12593, Mar. 29, 1984, as amended at 50 FR 791, Jan. 7, 1985; 54 FR 40063, Sept. 29, 1989]

Subpart 808.4—Ordering From Federal Supply Schedules

808.401 General.

The Director, VA Marketing Center, advertises, negotiates, awards the contracts, and is responsible for contract administration for FSS (Federal Supply Schedule) Groups 65 and 89. The Director issues the Federal Supply Schedules containing the necessary information for placing delivery orders with the contractors for the above FSS Groups.

808.404-1 Mandatory use.

(a) The contracting officer shall submit a request to the Director, VA Marketing Center, to negotiate a separate contract when requirements will exceed the maximum order limitation cited in the contract.

(b) Lower prices for identical items. (1) When an ordering agency finds an item which is identical to one listed on FSS Group 65 or 89, but available at a lower delivered price from a lower priority source, the ordering office may purchase the item subject to the requirements set forth in FAR 8.404-1(e). A copy of the purchase order shall be sent to the Director, VA Marketing Center, at the time the order is issued.

(2) An identical item is defined as: (i) nondrug item—same manufacturer and model number, or (ii) drug item—have the same National Drug Code (NDC) number.

[49 FR 12593, Mar. 29, 1984, as amended at 51 FR 19350, May 29, 1986; 54 FR 40063, Sept. 29, 1989]

808.404-3 Requests for waivers.

When an ordering office determines that an item available from FSS Group 65 or 89 will not meet its specific needs, it should submit a request for waiver to the Director, VA Marketing Center. The request shall contain the information set forth in FAR 8.404-3(a)(1) through (4).

[51 FR 19350, May 29, 1986]

808.405-5 Termination for default.

The Director, VA Marketing Center, is the authorized contracting officer to terminate for default any and all items covered by Federal Supply Groups 65 and 89. When notified of default action by the Director, VA Marketing Center, the contracting officer shall:

(a) Refuse to accept further performance by the contractor;

(b) Place no further orders with the contractor;

(c) Repurchase against the contractor in default from sources designated by the Director, VA Marketing Center; or

(d) Proceed as otherwise directed by the Director, VA Marketing Center.

[49 FR 12593, Mar. 29, 1984, as amended at 54 FR 40063, Aug. 3, 1989]

PART 809—CONTRACTOR QUALIFICATIONS

Subpart 809.1—Responsible Prospective Contractors

Sec.
809.104-2 Special standards.
809.106-1 Conditions for preaward surveys.

Subpart 809.2—Qualified Products

809.206 Acquiring qualified products.
809.270 Qualified products for convenience/labor saving foods.

Subpart 809.4—Debarment, Suspension, and Ineligibility

809.400 Scope of subpart.
809.403 Definitions.
809.404 Consolidated list of debarred, suspended, and ineligible contractors.
809.405 Effect of listing.
809.406 Debarment.
809.406-1 General.
809.406-3 Procedures.
809.406-4—Period of debarment.
809.407 Suspension.
809.407-1 General.
809.407-3 Procedures.

Subpart 809-5—Organizational Conflicts of Interest

809.504 Contracting officer's responsibilities.
809.505 General rules.
809.508-2 Contract clause.

Subpart 809.7—Defense Production Pools and Research and Development Pools

809.702 Contracting with pools.

AUTHORITY: 38 U.S.C. 210, 40 U.S.C. 486(c) and 42 U.S.C. 2453(c).

SOURCE: 49 FR 12594, Mar. 29, 1984, unless otherwise noted.

Subpart 809.1—Responsible Prospective Contractors

809.104-2 Special standards.

Standards applicable to subsistence will be established based on preaward surveys prescribed by 809.106-1.

809.106-1 Conditions for preaward surveys.

(a) Preaward on-site evaluation will be made for contracts covering the products and services of bakeries, dairies, ice cream plants and laundry and dry cleaning activities. A committee under the direction of the contracting officer and composed of representatives of the medical service and/or using service chiefs or designees appointed by the facility director will inspect and evaluate the plant, personnel, equipment and processes of the prospective contractor. Prior to any inspection, the contracting officer will inquire whether the plant has been recently inspected and approved by another Department of Veterans Affairs facility or Federal agency. Approved inspection reports of another Department of Veterans Affairs facility will be accepted by Department of Veterans Affairs facilities and approved inspection reports of other Federal agencies may be accepted as satisfactory evidence that the facilities of the bidder meet the requirements of the Invitation for Bid, provided inspection was made not more than 6 months prior to the proposed contract period.

(b) Preaward on-site evaluation of dairy plants will not be made by the Department of Veterans Affairs when acceptable bids are received from suppliers of those dairy products designated as No. 1 in the Federal Specifications. Suppliers must have received, prior to opening of bids, a pasteurized milk rating of 90 percent or more for the type of product being supplied, on the basis of the U.S. Public Health Service milk ordinance and code. Such rating must be current (not over 2 years old), and will have been determined by certified State milk sanitation rating officer in the State of origin or by the Public Health Service and will continue at 90 percent or more during the period of the contract. Firms not so rated may only offer dairy products designated as No. 2 in the Federal Specifications. Award to such firms may be made only after completion of a preaward on-site evaluation conducted in accordance with paragraph (a) of this section.

(c) Prior to any open market purchase of fresh bakery products (such as pies, cakes, cookies), the plant where these products are produced or prepared will be inspected and evaluated as provided in paragraph (a) of this section. On-site evaluation will be made at least annually and recorded on VA Form 10-2079, Inspection Report of Bakery.

[49 FR 12594, Mar. 29, 1984, as amended at 54 FR 30044, July 18, 1989; 54 FR 40063, Sept. 29, 1989]

Subpart 809.2—Qualified Products

809.206 Acquiring qualified products.

(a) Federal Qualified Products Lists are lists of products qualified under the applicable Federal or interim Federal specification. Such lists may be used as authorized by the appropriate administration or staff office. Requests to receive copies of existing Federal Qualified Products Lists will be submitted to the Deputy Assistant Secretary for Acquisition and Materiel Management (91) for transmittal to General Services Administration. Requests to establish a Federal Qualified Products List for a commodity will be submitted to the Deputy Assistant Secretary for Acquisition and Materiel Management (91), supported by one or more of the following justifications:

(1) The time required for testing after award would unduly delay delivery of the supplies being purchased.

(2) The cost of repetitive testing would be excessive.

(3) The tests would require expensive or complicated testing apparatus not commonly available.

(4) The interest of the Government requires assurance, prior to award, that the product is satisfactory for its intended use.

(5) The determination of acceptability would require performance data to supplement technical requirements in the specification.

(b) VA Qualified Products Lists are lists of products qualified by VA under VA specifications or purchase descriptions. Such lists may be established as authorized by the appropriate administration or staff office.

(1) VA Qualified Products Lists will be supported by one or more of the justifications in 809.206(a) or the following:

(i) Where tests result in substantial or repetitive rejections, or

(ii) Where professional requirements of performance, balance, design, or construction cannot economically be developed into clear specifications, and professional judgment is required in determining the acceptability of items meeting VA requirements.

(2) In the event that the requirement for VA Qualified Products List is established for any given product, known suppliers of the type of item required will be notified and given an opportunity to submit samples for inspection, and test based upon guarantee that they will deliver the item to be inspected, provided the item is acceptable. A qualified products list shall not be used as a means of restricting competition to favored suppliers. All suppliers so desiring shall be given an opportunity to have their products tested for acceptability.

(3) Costs involved in the inspection and test will be borne by VA. The supplier will be required to bear the cost of the sample and its transportation to the inspecting point. After inspection, the sample shall be returned to the supplier "as is" unless it is destroyed by inspection or disposed of or retained by VA as authorized by the supplier.

(4) Items which have been accepted for the qualified products list will be subject to constant review for compliance with the applicable specification. Where there is a variance between the specification and item, the supplier shall be requested to furnish an item that conforms to the specification. Failure or inability on the part of the supplier to provide an item that conforms to the specification will be sufficient cause to consider the item unacceptable in response to subsequent invitations.

(5) The acceptance of an item for the qualified products list does not guarantee acceptance in any future purchase, nor does it constitute a waiver of the requirements of the specifications as to acceptance, inspection, testing or other provisions of any future contract involving such item.

(6) Bid invitations covering products which have been included in a qualified products list will include the clause set forth in FAR 52.209-1 or 52.209-2 as applicable.

[49 FR 12594, Mar. 29, 1984, as amended at 54 FR 30044, July 18, 1989; 54 FR 40063, Sept. 29, 1989]

809.270 Qualified products for convenience/labor saving foods.

(a) Each VA medical district's Dietetic Service representative is delegated authority to establish a common Qualified Products List for convenience/labor-saving foods for the use of medical centers within his/her respective district. The medical district Dietetic Service representative will notify the Director, Dietetic Service, VA Central Office, of the establishment of each Qualified Products List and amendments to each established list.

(b) Each medical center is authorized to use its district Qualified Products List. Each medical center may test food of its own choice, but will submit test results to the district Dietetic Service representative. The Dietetic Service representative will coordinate and consolidate the test results and recommendations of individual medical centers with other medical centers within the district in order to avoid unnecessary duplication.

(c) The approved medical district Qualified Products List will be furnished each Supply office within the district. The Supply Services will have access to complete and accurate records of established Qualified Products Lists and all test results. These records will be made available to the Office of Acquisition and Materiel Management, VA Central Office, upon request.

[49 FR 12594, Mar. 29, 1984, as amended at 54 FR 30044, July 18, 1989]

Subpart 809.4—Debarment, Suspension, and Ineligibility

809.400 Scope of subpart.

This subpart prescribes procedures for debarring or suspending contractors and the inclusion of those contractors on the consolidated list of debarred, suspended or ineligible bidders.

809.403 Definitions.

"Fact-finding" as used in this subpart shall mean a gathering of facts which is accomplished through informal meetings with the contractor, submissions of information, either verbally or in writing, by the contractor, and any other method deemed appropriate by the debarring official.

[49 FR 12594, Mar. 29, 1984, as amended at 50 FR 791, Jan. 7, 1985]

809.404 Consolidated list of debarred, suspended, and ineligible contractors.

(a) The Office of Acquisition and Materiel Management (93) shall be responsible for the action described in FAR 9.404(c) (1), (2), (4) and (6).

(b) The Office of Acquisition and Materiel Management (91) shall be responsible for the actions described by FAR 9.404(c) (3) and (5).

[49 FR 12594, Mar. 29, 1984, as amended at 54 FR 30044, July 18, 1989]

809.405 Effect of listing.

The Deputy Assistant Secretary for Acquisition and Materiel Management shall make the determinations required by FAR 9.405(a) and 9.405-2 to solicit from, award contracts to, or consent to subcontracts with contractors whose names are included on the consolidated list of debarred, suspended or ineligible contractors.

[49 FR 12594, Mar. 29, 1984, as amended at 54 FR 30044, July 18, 1989]

809.406 Debarment.

809.406-1 General.

(a) The Deputy Assistant Secretary for Acquisition and Materiel Management is the debarring official for the Department of Veterans Affairs.

(b) Any Department of Veterans Affairs employee may submit a recommendation to the Deputy Assistant Secretary for Acquisition and Materiel Management that a firm or individual be debarred by the Department of Veterans Affairs.

(c) Such recommendations must be supported by documentary evidence of a cause listed in FAR 9.406-2.

809.406-3 Procedures.

(a) The Deputy Assistant Secretary for Acquisition and Materiel Management shall, upon a receipt of a recommendation for debarment, appoint a designee to conduct an investigation, initiate debarment and present the facts to the debarring official for consideration and action.

(b) The appointed designee shall issue the proposed debarment notice as required by FAR 9.406-3(c).

(1) If no reply is received from the firm or individual to the notice of proposed debarment, the case will be referred to the debarring official for decision on the basis of information available.

(2) When a reply is received, the information provided will be considered by the appointed designee prior to making a recommendation to the debarring official. If the contractor's submission in opposition to the debarment raises a genuine dispute over facts material to the proposed debarment, the designee appointed by the Deputy Assistant Secretary for Acquisition and Materiel Management will conduct a fact-finding as prescribed by FAR 9.406-3(b)(2).

(3) Upon completion of the fact-finding with respect to disputed facts, a written findings of facts will be provided to the debarring official.

(4) The debarring official shall make a decision on the basis of all information available including findings of facts, and/or arguments submitted by the contractor.

[49 FR 12594, Mar. 29, 1984, as amended at 50 FR 791, Jan. 7, 1985]

809.406-4 Period of debarment.

The period of debarment will be based upon the circumstances involved but will not, except in unusual circumstances, exceed a period of 3 years. The Deputy Assistant Secretary for Acquisition and Materiel Management may for those firms or individuals debarred by the Department of Veterans Affairs decide to remove the debarment, reduce the period of debarment, or amend the scope of the debarment, if indicated, after review of documentary evidence submitted by or in behalf of the contractor setting forth the appropriate grounds for granting of such relief. Such grounds may be, but are not limited to, newly discovered material evidence, reversal of a conviction, bona fide change of ownership or management or the elimination of the cause for which debarment was imposed.

809.407 Suspension.

809.407-1 General.

The Deputy Assistant Secretary for Acquisition and Materiel Management is the suspending official for the Department of Veterans Affairs.

809.407-3 Procedures.

(a) Suspension may be recommended by any Department of Veterans Affairs employee. These recommendations will be submitted to the Deputy Assistant Secretary for Acquisition and Materiel Management and must be supported by documentary evidence of a cause listed in FAR 9.407-2.

(b) The Deputy Assistant Secretary for Acquisition and Materiel Management shall designate an official to initiate suspension, conduct an investigation and present the facts to the suspending official for consideration and appropriate action.

(c) The designee shall issue the proposed suspension notice as required by FAR 9.407-3(c).

(1) If no reply is received from the contractor to the notice of proposed suspension, the case will be referred to the suspending official for decision on the basis of information available.

(2) When a reply is received, the information provided will be considered by the official conducting the suspension proceedings prior to referring the case with recommendations to the suspending official. If the contractor's submission in opposition to the suspension raises a genuine dispute over facts material to the proposed suspension, the designee of the Deputy Assistant Secretary for Acquisition and Materiel Management will conduct a fact-finding as prescribed by FAR 9.407-3(b)(2).

(3) Upon completion of the informal hearing with respect to the disputed facts, a written findings of facts will be prepared and presented to the suspending official.

(4) The suspending official shall make a decision on the basis of all information available including findings of facts, and/or arguments submitted by the contractor.

Subpart 809.5—Organizational Conflicts of Interest

809.504 Contracting officer's responsibilities.

(a) Contracting officers will be responsible for determining the existence of actual and/or potential organizational conflicts of interest which would result from the award of the contract. The contracting officer will be guided by information submitted by offerors and by his/her own judgment. The contracting officer may obtain the advice of legal counsel and the assistance of technical specialists in evaluating potential organizational conflicts.

(b) If it is determined that organizational conflicts of interest will be created by the award of the contract, the contracting officer may find an offeror nonresponsible.

(c) Notwithstanding the existence of organizational conflicts of interest, it may be determined that the award of the contract would be in the best interest of the Government. In that case, the contracting officer may set terms and conditions which will reduce the organizational conflicts of interest to the greatest extent possible, with the approval of the head of the contracting activity.

(d) The contracting officer will, in addition to any certifications required by this subpart, require in all solicitations for consulting services that the offeror submit as part of an offer a statement which discloses all relevant facts relating to existing or potential organizational conflicts of interest surrounding the contract and/or the proposed use of subcontractors during the contract.

809.505 General rules.

The determination that organizational conflicts of interest exist can only be made when facts surrounding individual contracting situations are known. Therefore, it is up to the contracting officer to exercise common sense, good judgment and sound discretion in making such a determination and to take steps to mitigate to the greatest extent possible organizational conflicts of interest. The contracting officer will be guided by at least two underlying principles. These are that organizational conflicts of interest may result from (a) conflicting roles and interests of the contractor, in which case he/she would be unable to give unbiased and objective advice or may otherwise produce a biased work product; or (b) unfair competitive advantage which exceeds a normal flow of benefits from the award of the contract.

809.508-2 Contract clause.

The representation in 852.209-70, Organizational Conflicts of Interest, will be made a part of all solicitations for consulting services.

[49 FR 12594, Mar. 29, 1984, as amended at 50 FR 791, Jan. 7, 1985]

Subpart 809.7—Defense Production Pools and Research and Development Pools

809.702 Contracting with pools.

Department of Veterans Affairs contracting officers will be advised of, consider bids from, and make awards to, Small Business and Defense Production Pools. The Chief Medical Director, or designee, will notify the appropriate administrations and staff offices when such pools are approved.

[49 FR 12594, Mar. 29, 1984, as amended at 54 FR 40063, Sept. 29, 1989]

PART 810—SPECIFICATIONS, STANDARDS AND PURCHASE ORDER DESCRIPTIONS

Sec.
810.001 Definitions.
810.004 Selecting specifications or descriptions for use.
810.004-70 Sealed bidding.
810.004-71 Bid evaluation and award.
810.004-72 Procedure for negotiated procurements.
810.006 Using specifications and standards.
810.007 Deviations.
810.011 Solicitation provisions and contract clauses.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

SOURCE: 52 FR 281, Jan. 5, 1987, unless otherwise noted.

810.001 Definitions.

(a) "Brand name product" means a commercial product. described by brand name and make or model number or other appropriate nomenclature by which such product is offered for sale to the public by the particular manufacturer, producer or distributor.

(b) "Salient characteristics" are those particular characteristics that specifically describe the essential physical and functional features of the material or service required. They are those essential physical or functional features which are identified in the specifications as a mandatory requirement which a proposed "equal" product or material must possess in order for the bid to be considered responsive. Bidders must furnish all descriptive literature and bid samples required by the solicitation to establish such "equality".

810.004 Selecting specifications or descriptions for use.

(a) Specifications shall be written in accordance with FAR 10.002 unless otherwise justified by the specification writer and approved by the contracting officer as described in paragraph (b) of this section. The contract file shall be documented accordingly.

(b) When it is determined that a particular physical or functional characteristic of only one product will meet the minimum requirements of the Department of Veterans Affairs (see FAR 10.004(b)(2)) or that a "brand name or equal" purchase description will be used (see FAR 10.004(b)(3)), the specification writer, whether agency personnel, architect-engineer, or consultant with which the Department of Veterans Affairs has contracted, shall separately identify the item(s) to the contracting officer and provide a full written justification of the reason the particular characteristic is essential to the Government's requirements or why the "brand name or equal" purchase description is necessary. The contracting officer shall make the final determination whether specifications in FAR 10.004(b) (2) and (3), will be included in the solicitation.

(c) Purchase descriptions which contain references to one or more brand name products may be used only when authorized by FAR 10.004(b) and 10.006(a) and in accordance with 810.004-70, 810.004-71, and 810.004-72. In addition, purchase descriptions which contain references to one or more brand name products shall be followed by the words "or equal," except when the acquisition is fully justified under FAR 6.3 and VAAR 806.3. Acceptable brand name products should be listed in the solicitation. Where a "brand name or equal" purchase description is used, prospective contractors must be given the opportunity to offer products other than those specifically referenced by brand name if such other products are determined by the Government to fully meet the salient characteristics listed in the invitation. The contract file will be documented in accordance with paragraph (b) of this section, justifying the need for use of a brand name or equal description.

(d) "Brand name or equal" purchase descriptions shall set forth those salient physical, functional, or other characteristics of the referenced products which are essential to the minimum needs of the Government. For example, when interchangeability of parts is required, such requirement should be specified. Purchase descriptions shall contain the following information to the extent available, and include such other information as is necessary to describe the item required:

(1) Complete common generic identification of the item required;

(2) Applicable model, make or catalog number for each brand name product referenced, and identity of the commerical catalog in which is appears; and

(3) Name of manufacturer, producer or distributor of each brand name product referenced (and address if not well known).

(e) When necessary to describe adequately the item required, an applicable commercial catalog description or pertinent extract may be used if such description is identified in the solicitation as being that of the particular named manufacturer, producer or distributor. The contracting officer will insure that a copy of any catalogs referenced (except parts catalogs) is available on request for review by bidders at the purchasing office.

(f) Except as noted in paragraph (c) of this section, purchase descriptions shall not include either minimum or maximum restrictive dimensions, weights, materials or other salient characteristics which are unique to a brand name product or which would tend to eliminate competition or other products which are only marginally outside the restrictions, unless such restrictions are determined in writing by the user to be essential to the Government's requirements, the brand name of the product is included in the purchase description and all other determinations required by 810.004 have been made.

810.004-70 Sealed bidding.

(a) When any purchase description, including a "brand name or equal" purchase description, is used in a solicitation for a supply contract to describe required items of mechanical equipment, the solicitation will include the clauses in 852.210-70 (Service Data Manual) and in 852.210-71 (Guarantee).

(b) Solicitations using "brand name or equal" purchase descriptions will contain the "brand name or equal" provision in 852.210-77, and the provision set forth at FAR 52.214-21, Descriptive Literature. Contracting officers are cautioned to review the requirements at FAR 14.202-5(d) when utilizing the descriptive literature provision.

(c) Except as provided in 810.004-70(d), when a "brand name or equal" purchase description is included in an invitation for bids, the following shall be inserted after each item so described in the solicitation, for completion by the bidder:

Bidding on:

Manufacturer name ____________________

Brand ____________________

No. ____________________

(d) When component parts of an end item are described in the solicitation by a "brand name or equal" purchase description and the contracting officer determines that the clause in 810.004-70(b) is inapplicable to such component parts, the requirements of 810.004-70(c) shall not apply with respect to such component parts. In such cases, if the clause is included in the solicitation for other reasons, a statement substantially as follows also shall be included:

> The clause entitled "Brand Name or Equal" does not apply to the following component parts: (list the component parts to which the clause does not apply).

In the alternative, if the contracting officer determines that the clause in 810.004-70(c) shall apply to only certain such component parts, the requirements of 810.004-70(b) shall apply to such component parts and a statement substantially as follows also shall be included:

> The clause entitled "Brand Name or Equal" applies to the following component parts: (list the component parts to which the clause applies).

(e) When a solicitation contains "brand name or equal" purchase descriptions, bidders who offer brand name products, including component parts, referenced in such descriptions shall not be required to furnish bid samples of the referenced brand name products. However, solicitations may require the submission of bid samples in the case of bidders offering "or equal" products. If bid samples are required, the solicitation shall include the provision set forth at FAR 52.214-20, Bid Samples. The bidder must still furnish all descriptive literature in accordance with and for the purpose set forth in the "Brand Name of Equal" clause, 852.210-77(c)(1) and (2), even though bid samples may not be required.

[52 FR 281, Jan. 5, 1987, as amended at 53 FR 7755, Mar. 10, 1988]

810.004-71 Bid evaluation and award.

(a) Bids offering products which differ from brand name products referenced in a "brand name or equal" purchase description shall be considered for award when the contracting officer determines in accordance with the terms of the clause at 852.210-77 that the offered products are clearly identified in the bids and are equal in all material respects to the products specified.

(b) Award documents shall identify, or incorporate by reference, an identification of the specific products which the contractor is to furnish. Such identification shall include any brand name and make or model number, descriptive material, and any modifications of brand name products specified in the bid. Included in this requirement are those instances when the descriptions of the end items contain "brand name or equal" purchase descriptions of component parts or of accessories related to the end item, and the clause at 852.210-77 was applicable to such component parts or accessories (see 810.004-70(e)).

810.004-72 Procedure for negotiated procurements.

(a) The policies and procedures prescribed in 810.004-70 and 810.004-71 should be used as a guide in developing adequate purchase descriptions for negotiated procurements.

(b) The clause at 852.210-77 may be adapted for use in negotiated procurements. If use of the clause is not practicable (as may be the case in unusual and compelling urgency purchases), suppliers shall be suitably informed that proposals offering products different from the products referenced by brand name will be considered if the contracting officer determines that such offered products are equal in all material respects to the products referenced.

810.006 Using specifications and standards.

(a) *Exceptions to mandatory use of Federal specifications.* The exception to the mandatory use of Federal specifications, with respect to purchases not exceeding the small purchase limitation authorized by FAR 10.006(a)(ii) does not apply to items (1) purchased from GSA stock, (2) available from a Federal supply schedule contract, or (3) identified by a VA X-Series Specification.

(b) *Optional use of interim Federal specifications.* (1) Interim Federal specifications, developed by VA, as indicated in the preamble, are mandatory under the same conditions and with the same exceptions as provided for Federal specifications.

(2) Suggested changes to interim Federal specifications used on an optional basis will be handled as in 810.007.

(c) *Military and departmental specifications.* (1) The monetary exemption to the use of Federal specifications contained in FAR 10.006(a)(ii) is equally applicable to Department of Veterans Affairs, military and departmental specifications. Contracting officers may, when they deem it to be advantageous to the Department of Veterans Affairs, utilize these specifications when procuring supplies and equipment costing less than the small purchase limitation. However, when purchasing items of perishable subsistence, contracting officers shall observe only those exemptions set forth in paragraphs (c) (5) and (6) of this section.

(2) When circumstances will not permit a field station to use a Department of Veterans Affairs specification without deviation, the contracting officer shall, prior to taking any procurement action, submit to the Deputy Assistant Secretary for Acquisition and Materiel Management, or Director, VA Marketing Center, Hines, Ill., whichever is appropriate, a request for authority to deviate from the specification. The request will specifically detail the reasons why the deviation is essential to the facility's operation. The approving authority will coordinate the request with the using service in Central Office. The contracting officer will be advised as to the approval or disapproval of the request. If approved the letter of approval will be filed in the appropriate purchase or contract file.

(3) The Department of Veterans Affairs has adopted for use in the procurement of packinghouse products, the purchase descriptions and specifications set forth in the Institutional Meat Purchase Specifications (IMPS), and the IMPS General Requirements, which have been developed by the U.S. Department of Agriculture. Purchase descriptions and specifications for dairy products, poultry, eggs, fresh and frozen fruits and vegetables, as well as certain packinghouse products selected from the IMPS especially for Department of Veterans Affairs use, are contained in the Federal Hospital Subsistence Guide. A copy of this guide and the IMPS may be obtained from any Department of Veterans Affairs contracting officer.

(4) Contract terms and conditions governing the procurement of subsistence items are listed in the Federal Hospital Subsistence Guide and IMPS. These provisions shall be made a part of each solicitation for such items when applicable.

(5) The military specifications for meat and meat products contained in Federal Hospital Subsistence Guide shall be used by the Department of Veterans Affairs only when purchasing such items of subsistence from the Defense Logistics Agency (DLA). Military specifications for poultry, eggs, and egg products contained in Federal Hospital Subsistence Guide may be used when purchasing either from DLA or from local dealers.

(6) Except as authorized in Part 846 of this chapter, contracting officers shall not deviate from the specifications contained in Federal Hospital Subsistence Guide, and the IMPS without prior approval of the Deputy Assistant Secretary for Acquisition and Materiel Management.

(7) Items of meat, cured pork and poultry, not listed in either the Federal Hospital Subsistence Guide or the IMPS, will not be purchased without prior approval of the Deputy Assistant Secretary for Acquisition and Materiel Management.

(8) In the absence of mandatory documents, specifications or purchase descriptions of other agencies may be used by the various Marketing Divisions when appropriate. These specifications or purchase descriptions may be modified to meet the needs of the Department of Veterans Affairs. If repeated use of a modified specification or purchase description is required, the Director, VA Marketing Center shall consider converting it to a Department of Veterans Affairs specification.

(9) A field facility may use a specification or purchase description of another agency without prior approval

when the specification or description will, without modification, satisfy its needs. If, however, the specification or description must be modified to meet the facility's needs, the procedure set forth in paragraph (c)(2) of this section will be followed.

(10) The Director, Publications Service, is responsible for developing, publishing, and distributing Department of Veterans Affairs specifications covering printing and binding.

(11) Department of Veterans Affairs specifications, as they are revised, are placed in stock in the VA Forms and Publications Depot. Facility requirements of these specifications will be requisitioned from that source.

(d) *Government paper specification standards.* Invitations for bids, requests for proposals, purchase orders, or other procurement instruments covering the purchase of paper stocks to be used in duplicating or printing, or which specify the paper stocks to be used in buying printing, binding, or duplicating will require that such paper stocks be in accordance with the government Paper Specification Standards issued by the Joint Committee on Printing of Congress.

(e) *Department of Veterans Affairs binding specifications.* (1) All binding or rebinding of books, magazines, pamphlets, newspapers, slip cases and boxes will be procured in accordance with Government Printing Office (GPO) specifications and will be procured from the servicing GPO Regional Printing Procurement Office or, when appropriate, from commercial sources as prescribed in Subpart 808.8.

(2) There are three types of binding/rebinding: (i) Class A (hard cover); (ii) Perfect (glued); and (iii) Lumbinding (sewn). The most suitable type of binding will be procured to satisfy the requirements, based upon the intended use of the bound material.

(f) *Mandatory use and applications of Federal standards.* (1) Requests for exceptions to Federal Standards not authorized by FAR 10.006(a)(ii) will be submitted with adequate justification to the Deputy Assistant Secretary for Acquisition and Materiel Management (91A) for submission to General Services Administration.

(2) Federal standards do not preclude the use of existing Government stocks or acceptance of excess property not in full conformity with the standard items.

[49 FR 12597, Mar. 29, 1984, as amended at 50 FR 791, Jan. 7, 1985; 54 FR 30044, July 18, 1989; 54 FR 40063, Sept. 29, 1989]

810.007 Deviations.

(a) *Deviations from Federal specifications*—(1) *Field facility.* When a deviation from a Federal specification is deemed necessary because of a specific requirement, the contracting officer will request such authority from the Deputy Assistant Secretary for Acquisition and Materiel Management, prior to procurement. The request will specify exactly how the facility proposes to deviate from the current specification and why the particular deviation is essential to the facility's operations. The contracting officer will be advised as to approval or disapproval of the request. If approved, the Deputy Assistant Secretary for Acquisition and Materiel Management will, when necessary, forward the notice required by FAR 10.007(a)(4) to the General Services Administration.

(2) *Marketing center.* When the essential needs of the Department of Veterans Affairs are not adequately covered by an existing Federal specification, the Chief of the Marketing Division concerned will:

(i) When the required deviation affects only the packing, packaging, marking or labeling, and the item is being purchased for depot stock, coordinate the deviation with the Director, VA Supply Depot, Hines, Ill., through the Director, VA Marketing Center. If, in the opinion of the Director, VA Supply Depot, the proposed deviation will not affect storage, handling or transportation, the Director, VA Marketing Center, will be advised of his/her concurrence. The Director, VA Marketing Center, will then approve the deviation.

(ii) When the deviation specified in paragraph (a)(2)(i) of this section is for an item that is not being purchased for depot stock, document the reasons why the deviation is essential, and obtain the approval of the Director, VA Marketing Center, who will report the approval to the Deputy Assistant Secretary for Acquisition and Materiel Management.

(iii) When the required deviation affects other than packing, packaging, marking, or labeling, coordinate the required deviation with the using service in Central Office. If approved by the using service, a request for authority to deviate will be submitted to the Deputy Assistant Secretary for Acquisition and Materiel Management through the Director, VA Marketing Center, Hines, Ill. It will specify in detail why the specific deviation is essential to the Department of Veterans Affairs' operations and be accompanied by a copy of the using service's comments. The appropriate marketing division chief will be advised as to the approval or disapproval of the request. If approved, the Deputy Assistant Secretary for Acquisition and Materiel Management will when necessary forward the notice required by FAR 10.007(a)(4) to the General Services Administration.

[49 FR 12597, Mar. 29, 1984, as amended at 54 FR 30044, July 18, 1989; 54 FR 40063, Sept. 29, 1989]

810.011 Solicitation provisions and contract clauses.

Specifications. When product specifications are cited in an invitation for bids or requests for proposals, the citation shall include: (1) desired options, (2) deviations authorized in accordance with 810.007, listed in numerical sequence, and (3) shall conform to the following:

Shall be type ——, grade ——, in accordance with (type of specification) No. ——, dated ———— and amendment —— dated ————, except paragraphs —— and —— which are amended as follows.

[49 FR 12597, Mar. 29, 1984, as amended at 50 FR 791, Jan. 7, 1985; 54 FR 40063, Sept. 29, 1989]

PART 812—CONTRACT DELIVERY OR PERFORMANCE

Subpart 812.1—Delivery or Performance Schedules

Sec.
812.104 Contract clauses.

Subpart 812.2—Liquidated Damages

812.202 Policy.
812.204 Contract clauses.

Subpart 812.3—Priorities, Allocations, and Allotments

812.302 General.

Subpart 812.5—Suspension on Work, Stop-Work Orders, and Government Delay of Work

812.503 Stop-work orders.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12598, Mar. 29, 1984, unless otherwise noted.

Subpart 812.1—Delivery or Performance Schedules

812.104 Contract clauses.

When delivery is required by or on a particular date, the time of delivery clause set forth in FAR 52.212-1 as it relates to f.o.b. destination contracts will state that the delivery date specified is the date by which the shipment is to be delivered, not the shipping date. In f.o.b. origin contracts, the clause will state that the date specified is the date shipment is to be accepted by the carrier.

Subpart 812.2—Liquidated Damages

812.202 Policy.

Liquidated damages provisions will not be routinely included in supply or construction contracts, regardless of dollar amount. The decision to include liquidated damages provisions will conform to the criteria in FAR 12.202. In making this decision, consideration will be given to whether the necessity for timely delivery or performance as required in the contract schedule is so critical that a probable increase in contract price is justified. Liquidated damages provisions will not be included as insurance against selection of a non-responsible bidder, as a substitute for efficient contract administration, or as a penalty for failure to perform on time.

812.204 Contract clauses.

When the liquidated damages clause prescribed in FAR 52.212-4 and 52.212-5 is to be used and where partial performance may be utilized to the advantage of the Government, the clause in 852.212-70 will be included in the contract.

Subpart 812.3—Priorities, Allocations, and Allotments

812.302 General.

(a) Priorities, allocations, and allotments of critical materials are controlled by the Department of Commerce. Essentially such priorities, etc., are restricted to projects having a direct connection with supporting current defense needs. The Department of Veterans Affairs is not authorized to assign a priority rating to its purchase orders or contracts involving the acquisition or use of critical materials.

(b) In those instances where it has been technically established that it is not feasible to use a substitute material, the Department of Commerce has agreed to assist us in obtaining critical materials for maintenance and repair projects. They will also, where possible, render assistance in connection with the purchase of new items, which may be in short supply because of their use in connection with the defense effort.

(c) Contracting officers having problems in acquiring critical materials will ascertain all the facts necessary to enable the Department of Commerce to render assistance to the Department of Veterans Affairs in acquiring these materials. The contracting officer will submit a request for assistance containing the following information to the Deputy Assistant Secretary for Acquisition and Materiel Management (90):

(1) A description of the maintenance and repair project or the new item, whichever is applicable.

(2) The critical material and the amount required.

(3) The contractor's sources of supply including any addresses. If the source is other than the manufacturer or producer, also list the name and address of the manufacturer or producer.

(4) The Department of Veterans Affairs contract or purchase order number.

(5) The contractor's purchase order number, if known, and the delivery time requirement as stated in the solicitation or offer.

(6) The additional time the contractor claims will be necessary to effect delivery if priority assistance is not provided.

(7) The nature and extent of the emergency that will be generated at the station, e.g., (i) damage to the physical plant, (ii) impairment of the patient care program, (iii) creation of safety hazards, and (iv) any other pertinent condition that will result because of failure to secure assistance in obtaining the critical materials.

(8) If applicable, a statement that the item required is for use in a construction contract which was authorized by the Deputy Assistant Secretary for Facilities (08), to be awarded and administered by the facility contracting officer.

[49 FR 12598, Mar. 29, 1984, as amended at 54 FR 40063, Sept. 29, 1989]

Subpart 812.5—Suspension of Work, Stop-Work Orders, and Government Delay of Work

812.503 Stop-work orders.

When the contracting officer has determined that it is advisable to suspend work, pending a decision by the Government, and a supplemental agreement providing for the suspension is not feasible, he/she will request approval to issue a stop-work order to the appropriate contracting officer designated in 801.602.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 813.1—General

Sec.
813.103 Policy.

Subpart 813.5—Purchase Orders

813.505-2 Agency forms in lieu of Optional Forms 347 and 348.
813.506-70 Oral purchase orders.
813.507 Clauses.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 813.1—General

813.103 Policy.

(a) Procurement of medical services and resources authorized by sections 4117 and 5053 of Title 38, United States Code, costing less than the small purchase limitation may be procured under the small purchase authority of 41 U.S.C. 253(g). However, each such contract and revision thereof is subject to the same approval as those costing in excess of the small purchase limitation (815.7001).

(b) Except as provided in this paragraph, purchases authorized to be acquired under the special procurement authorities contained in Title 38, United States Code, will be acquired under the authority of 41 U.S.C. 253(g) when the amount of purchase is not in excess of the small purchase limitation (FAR Part 13). An exception exists in the case of services or supplies purchased in support of property acquired under the Loan Guaranty program. For such purchases, 38 U.S.C. 1820(b) requires sealed bidding if the amount will exceed $1,000.

(c) Procurements of consulting, management, administrative and professional services costing less than the small purchase limitation and made under the authority of 38 U.S.C. 213 are subjects to the controls set forth in Subpart 837.2.

[51 FR 23068, June 25, 1986 and 52 FR 28559, July 31, 1987, as amended at 52 FR 28560, July 31, 1987; 54 FR 40063, Sept. 29, 1989]

Subpart 813.5—Purchase Orders

813.505-2 Agency forms in lieu of Optional Forms 347 and 348.

(a) VA Form 90-2138, Order for Supplies or Services, and VA Form 90-2139, Order for Supplies or Services (Continuation), provide in one interleaved set of forms a purchase or delivery order, vendor's invoice, and receiving report. They will be used in lieu of and in the same manner as Optional Form 347, Order for Supplies or Services and Optional Form 348, Order for Supplies or Services Schedule—Continuation.

(b) The following order forms are for use when ordering the indicated medical, dental and ancillary services up to $10,000 per authorization when such services are not available under existing contracts.

(1) VA Form 10-7078, Authorization and Invoice for Medical and Hospital Services.

(2) VA Form 10-7079, Request for Outpatient Medical Services.

(3) VA Form 10-2570d, Dental Record, Authorization and Invoice for Outpatient Services.

(c) In authorizing patient travel as set forth in VA Manual MP-1, Part II, Chapter 3, VA Form 10-2511, Authority and Invoice for Travel by Ambulance or Other Hired Vehicle, will be used as provided by that manual.

(d) Standard Form 182, Request, Authorization, Agreement, and Certification of Training, will be utilized for the procurement of training in the manner prescribed in 870.104.

(e) VA Form 10-2421, Prosthetics Authorization and Invoice, will be used as prescribed in 801.670-15 for indicated services not in excess of $300.

[49 FR 12599, Mar. 29, 1984]

813.506–70 Oral purchase orders.

Oral purchase orders, when considered advantageous to the Department of Veterans Affairs, may be used for transactions not in excess of $2,500. This limitation does not apply to delivery orders against existing contracts, e.g., delivery orders against FSS Contracts. The transaction will be assigned a purchase order number and receipt documentation will be obtained on the copies of the purchase request utilized as a property voucher and receiving report. Documentation as to competition will be in accordance with FAR 13.106c.

[52 FR 28560, July 31, 1987]

813.507 Clauses.

When using VA Form 90–2138 for maintenance contracts involving services performed on Government property and which have the potential for property damage and liability claims, the Contractor's Responsibilities clause found in 852.237–70 will be attached. Applicable maintenance contracts include but are not limited to window washing, pest control and elevator maintenance.

[49 FR 12599, Mar. 29, 1984]

PART 814—SEALED BIDDING

Subpart 814.1—Use of Sealed Bidding

Sec.
814.103 Policy.
814.103–1 General.
814.104 Types of contracts.
814.104–70 Fixed-price contracts with escalation.

Subpart 814.2—Solicitation of Bids

814.201 Preparation of invitations for bids.
814.202 General rules for solicitation of bids.
814.202–4 Bid samples.
814.203 Methods of soliciting bids.
814.203–1 Mailing or delivery to prospective bidders.
814.204 Records of invitations for bids and records of bids.
814.205 Solicitation mailing lists.
814.205–1 Establishment of lists.
814.205–2 Removal of names from solicitation mailing lists.
814.205–5 Release of solicitation mailing lists.
Sec.
814.208 Amendment of invitation for bids (construction).

Subpart 814.3—Submission of Bids

814.301 Responsiveness of bids.
814.302 Bid submission.
814.304 Late bids, late modifications of bids, or late withdrawal of bids.
814.304–2 Notification to late bidders.
814.304–4 Records.

Subpart 814.4—Opening of Bids and Award of Contract

814.402 Opening of bids.
814.403 Recording of bids.
814.404 Rejection of bids.
814.404–1 Cancellation of invitations after opening.
814.404–2 Rejection of individual bids.
814.404–70 Questions involving the responsiveness of a bid.
814.406 Mistakes in bids.
814.406–3 Other mistakes disclosed before award.
814.406–4 Mistakes after award.
814.407 Award.
814.407–70 Award when only one bid is received.
814.407–71 Recommendation for award (construction).
814.408 Information to bidders.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12599, Mar. 29, 1984, unless otherwise noted.

Subpart 814.1—Use of Sealed Bidding

814.103 Policy.

814.103–1 General.

Contracts in excess of the small purchase limitation or in excess of $1,000 for contracts made for repairs to property acquired by the Department of Veterans Affairs under Chapter 37, Title 38, United States Code, will be made by sealed bidding when all of the elements necessary for sealed bidding as prescribed in FAR 6.401(a) are present.

[51 FR 23068, June 25, 1986, and 52 FR 28559, July 31, 1987, as amended at 54 FR 40063, Sept. 29, 1989]

814.104 Types of contracts.

814.104-70 Fixed-price contracts with escalation.

When contracts of this nature are authorized pursuant to 816.102(b), contracting officers will be guided by the provisions of FAR 16.203.

Subpart 814.2—Solicitation of Bids

814.201 Preparation of invitations for bids.

(a) Invitations for bids for supplies, equipment and services will be serially numbered at the time of issue. The number will consist of the station or marketing division number, the serial number of the invitation, and the fiscal year in which issued, e.g., 101-24-84. A series beginning with the number 1 will be started each fiscal year. Invitations for bids for supplies, equipment and services which are issued, accepted and become contracts in the same fiscal year but, because of procurement leadtime, will not be performed until the ensuing fiscal year will be numbered in the series of the year in which they are issued. However, invitations issued in one fiscal year that will result in a contract that will become effective and performed only in the ensuing fiscal year will be numbered in the ensuing fiscal year series.

(b) Invitations for construction contracts will bear the applicable IFB number and project number, if assigned.

(c) In order to preclude adverse criticism of the Department of Veterans Affairs by prospective bidders relative to the disclosure of bid prices prior to bid opening, the provision entitled "Caution to Bidders Bid-Envelopes," as set forth in 852.214-70, will be prominently placed in all invitations for bids.

(d) To realize the greatest possible price advantage for the Government, items that may be processed by a contractor to effect a reduction in cost factors such as production, inspection and delivery, may be listed for award on both individual item and summary item bases. Items will be listed individually and, in addition, a summary price will be solicited for those items the contracting officer determines to be of a related character and normally handled by a majority of prospective bidders.

(1) When different products are to be combined for a summary price, the quantity, unit and unit price columns opposite the summary item will be crossed out, e.g.:

(Item No.) Summary bid for furnishing items —— to —— inclusive on an all or none basis:

Quantity	Unit	Unit Price	Summary
xx..................	xx..................	xx..................	$ xx

(Bidder will enter summary amount.)

(2) When a single unit price is solicited for a single product for delivery to various destinations, or for multiple deliveries, the total quantity required will be listed opposite the summary item, e.g.:

(Item No.) Summary bid for furnishing items —— to —— inclusive on all or none basis:

Quantity	Unit	Unit Price	Summary
xx..................	xx..................	xx..................	$ xx

(Bidder will enter unit price and summary amount.)

(3) Invitations containing a summary bid request will contain the following statement:

> The award will be made on either an individual item basis or summary bid basis, whichever results in the lowest cost to the Government. Therefore, to assure proper evaluation of all bids, a bidder quoting a summary bid price must also quote a price on each individual item included in the summary bid price.

(e) Bid invitations for supplies, equipment, or services (other than construction) must define the extent to which alternate bids will be authorized and considered. Alternates specified on construction projects will be considered for acceptance only as a part of the basic item.

(1) When an alternate item will be considered only if no bids or insufficient bids are received on the item desired, the clause set forth in 852.214-71(a) will be included in the invitation.

(2) When an alternate item will be considered on an equal basis with the

item specified, the clause set forth in 852.214-71(b) will be included in the invitation.

(3) In addition to the clauses referenced in paragraph (e) (1) or (2) of this section, the clause set forth in 852.214-71(c) will be included in the invitation when bids will be allowed on different packaging, unit designation, etc.

(f) When a contracting officer determines that it will be advantageous to the Government to make the award by group or groups of items, a provision for such award will be included in the invitation for bids.

(1) This may apply when:

(i) The items in the group or groups are readily available from the sources to be solicited; and

(ii) It is desirable to make a minimum number of contracts; or

(iii) Furniture or fixtures are required for a single project and uniformity of design is desirable; or

(iv) The articles required will be assembled and used as a unit.

(2) Solicitations for supplies and services, other than construction, will contain the provision set forth in FAR 52.214-22.

(3) Solicitations for construction contracts which solicit prices on an item and alternate item basis (when it is intended that a single aggregate award will be made for all items in the solicitation within certain fiscal limitations) will contain a statement as to the order of priority in which the alternate items will be awarded. This priority will be based on the relative importance of an item, the Department of Veterans Affairs' estimate, and the amount of funds available. Such schedules will be substantially as follows:

Item No. 1—Furnish all labor, material, equipment, etc., to paint buildings No. 1, 2, and 3, $——.

Alternate items in order of priority. Furnish all labor, material, equipment, etc., to paint:

Item No. 2—Building No. 1 only $——.
Item No. 3—Building No. 2 only $——.

A single award will be made on Item No. 1, but in the event the offer exceeds the funds available, a single award will be made on Item No. 2, or a combination of Item Nos. 2 and 3. Offerors should quote a price on each item listed.

[49 FR 12599, Mar. 29, 1984, as amended at 50 FR 791, Jan. 7, 1985; 51 FR 23068, June 25, 1986; 52 FR 28559, July 31, 1987; 52 FR 49017, Dec. 29, 1987; 54 FR 30044, July 18, 1989]

814.202 General rules for solicitation of bids.

814.202-4 Bid samples.

When it has been determined that samples are necessary to the proper awarding of a contract, the provision set forth in 852.214-73 will be added to the provision in FAR 52.214-20.

[49 FR 12599, Mar. 29, 1984, as amended at 52 FR 49017, Dec. 29, 1987]

814.203 Methods of soliciting bids.

814.203-1 Mailing or delivery to prospective bidders.

(a) The contracting officer will include either a bid envelope, or Optional Form 17, Sealed Bid Label, with each invitation for bids furnished to prospective bidders.

(b) Presolicitation notices may be issued for construction projects in accordance with 836.302.

[49 FR 12599, Mar. 29, 1984, as amended at 51 FR 23068, June 25, 1986; 52 FR 28559, July 31, 1987]

814.204 Records of invitations for bids and records of bids.

(a) A single register will be established and maintained by the issuing office on a fiscal year basis for all solicitations by invitations for bid or requests for proposal number, date of issue, date of opening, commodity or service involved and disposition, i.e., contract number or purchase order number or, when applicable, no award.

(b) Maintenance of the contract file prescribed by Part 804 and retention of canceled Invitation for Bid files will fulfill the requirements set forth in FAR 14.204.

814.205 Solicitation mailing lists.

814.205-1 Establishment of lists.

From the solicitations mailing list applications received, each contracting activity will compile and keep current a Solicitations Mailing List file. The lists will be maintained according to the commodity classification or group of items normally listed on the same invitation for bids.

[49 FR 12599, Mar. 29, 1984, as amended at 51 FR 23068, June 25, 1986; 52 FR 28559, July 31, 1987]

814.205-2 Removal of names from solicitation mailing lists.

Except as provided for in FAR 14.205-2, no Department of Veterans Affairs contracting officer, or other employee, shall remove from the solicitation mailing list the name of any prospective solicitation.

[49 FR 12599, Mar. 29, 1984, as amended at 51 FR 23068, June 25, 1986; 52 FR 28559, July 31, 1987]

814.205-5 Release of solicitation mailing lists.

When invitations for bids for supply and service contracts have been issued, contracting officers may furnish, upon request of an individual or institution having a bona fide interest in such information, a list of the prospective bidders to whom invitations for bids were submitted. The provisions of FAR 14.205-5 will be observed with respect to invitations for bids for construction contracts.

814.208 Amendment of invitation for bids (construction).

Amendments will be sent to holders of drawings and specifications by certified mail, return receipt requested. (Amendments may be made by telegram, if time does not permit mailing.)

Subpart 814.3—Submission of Bids

814.301 Responsiveness of bids.

Where the timeliness of the submission of a bid, modification or withdrawal cannot be administratively determined in accordance with FAR 14.301, the matter will be submitted by the contracting officer directly to the Comptroller General for decision. The submission will include copies of all pertinent papers. A copy of each submission will be forwarded to the Deputy Assistant Secretary for Acquisition and Materiel Management.

814.302 Bid submission.

A bid hand-carried by the bidder or his agent will be considered late unless delivered to the addressee designated in the bid invitation prior to the time set for opening.

[49 FR 12599, Mar. 29, 1985, as amended at 50 FR 791, Jan. 7, 1985]

814.304 Late bids, late modifications of bids, or late withdrawal of bids.

814.304-2 Notification to late bidders.

The notification to late bidders will specify the final date by which the evidence must be received to be considered. This date must be within the time allowed by the apparent low bidder for acceptance of his bid.

814.304-4 Records.

All bids received by mail (or telegram where authorized) will be time and date stamped immediately upon receipt at VA installation mail room and in the office of the addressee designated in the invitation. This will firmly establish the time of receipt of bids, or when bids are received in the office of the addressee subsequent to the time of opening, and it will establish whether or not the delay was due to mishandling on the part of VA.

[49 FR 12599, Mar. 29, 1984, as amended at 54 FR 40063, Sept. 29, 1989]

Subpart 814.4—Opening of Bids and Award of Contract

814.402 Opening of bids.

(a) The contracting officer shall serve as, or designate, a bid opening officer, and shall also designate a recorder.

(b) The form and amount of bid security and name of surety will be read aloud and recorded.

[49 FR 12599, Mar. 29, 1985, as amended at 50 FR 792, Jan. 7, 1985]

814.403 Recording of bids.

The information required for bid evaluation shall be recorded on the appropriate Abstract of Offers form (SF

1409 or SF 1419). The evaluation data may be recorded on supplemental sheets or forms such as VA Form 10-2237b, Request for Dietetic Supplies, providing that such supplemental sheets or forms are covered by one of the forms authorized above for recording bid or price data. In addition to those instructions set forth in FAR 14-403, the bid opening officer shall certify on the abstract the date and hour at which the bids were opened. Where erasures, strikeovers, or changes in price are noted at the time of opening, a statement to that effect will also be included on, or attached to, the abstract or record of bids.

814.404 Rejection of bids.

814.404-1 Cancellation of invitations after opening.

(a) A copy of each invitation for bids which is canceled as provided for in FAR 14.404-1, together with the abstract showing to whom such bids were sent, will be filed in a separate folder identified by the invitation number. Invitations for bids which result in no bids being received will be handled in like manner. In each instance the abstract will be annotated to show why an award was not made. These folders will be retained for the current and two succeeding fiscal years.

(b) The authority to approve cancellation of invitations for bid after opening and the authority to approve the acquisition after cancellation as provided in FAR 14.404-1(e) is delegated to the head of the contracting activity. The contracting officer will submit a D&F prepared as prescribed in Subpart 801.7 to the head of the contracting activity for signature.

[49 FR 12599, Mar. 29, 1984, as amended at 51 FR 23068, June 25, 1986; 52 FR 28560, July 31, 1987]

814.404-2 Rejection of individual bids.

(a) When a bid that is being considered for an award is found to be incomplete, e.g., all pages of the invitation have not been returned by the bidder, the contracting officer will take whichever of the following actions that is appropriate:

(1) Make a determination that the bid as submitted is in such a form that acceptance would create a valid and binding contract, requiring the contractor to perform in accordance with all of the material terms and conditions of the invitation. Such a determination may be based on the fact that the bid as submitted includes evidence that the offeror intends to be bound by all the material terms and conditions of the invitation.

(2) Make a determination that the bid as submitted is in such form that acceptance would not create a valid and binding contract.

(b) When a single bid is received in response to a solicitation, the offer shall not be rejected simply because it specifies a bid acceptance time which is shorter than that contained in the solicitation, unless a compelling reason exists for rejecting such a bid. Insufficient time to properly evaluate an offer shall be considered a compelling reason for rejection; however, the contracting officer will first request the offeror to extend the acceptance date of the bid to allow for proper evaluation.

NOTE: In those cases where more than one bid is received, an individual bid which is not in compliance with the Government's bid acceptance time shall be rejected as nonresponsive since consideration of such an offer would unfairly disadvantage other bidders.

814.404-70 Questions involving the responsiveness of a bid.

Questions involving the responsiveness of a bid which cannot be resolved by the contracting officer may be submitted to the Comptroller General through the Deputy Assistant Secretary for Acquisition and Materiel Management (93B) or the Deputy Assistant Secretary for Facilities (08), as appropriate. Pertinent documentation must accompany the submission.

[49 FR 12599, Mar. 29, 1984, as amended at 54 FR 40063, Sept. 29, 1989]

814.406 Mistakes in bids.

814.406-3 Other mistakes disclosed before award.

(a) In accordance with the provisions of the FAR 14.406-3(e), the authority of the Administrator to make the administrative determinations set forth in FAR 14.406-3 (a), (b), (c), and (d) is hereby delegated, without power of redelegation to the Deputy Assistant Secretary for Acquisition and Materiel Management. This delegation in no way impairs the delegations contained in Comptroller General decision B-122003, dated November 22, 1954.

(b) When a bidder alleges a mistake in his or her bid prior to award, after complying with the provisions of FAR 14.406-3, the contracting officer will submit the complete file to the Deputy Assistant Secretary for Acquisition and Materiel Management (93B) for an administrative determination. Based upon the evidence submitted, the Deputy Assistant Secretary for Acquisition and Materiel Management will determine the action to be taken by the contracting officer. Prior to its release to the contracting officer, this determination will be submitted to the General Counsel (025) for approval. Pending receipt of the determination, no award shall be made.

(c) Based on the evidence, when the Deputy Assistant Secretary for Acquisition and Materiel Management believes that the case should be submitted to the Comptroller General for decision, he/she will prepare the submission and forward it to the Comptroller General through the General Counsel (025). The decision of the Comptroller General will be furnished to the contracting officer by the Deputy Assistant Secretary for Acquisition and Materiel Management (93B). A copy of each such decision will be furnished to the General Counsel (025).

[49 FR 12599, Mar. 29, 1984, as amended at 54 FR 30044, July 18, 1989]

814.406-4 Mistakes after award.

(a) When a contracting officer corrects a mistake in bid pursuant to FAR 14.406-4(a), a copy of the contract amendment or supplemental agreement together with a copy of the contracting officer's determination will be forwarded to the Deputy Assistant Secretary for Acquisition and Materiel Management (93B).

(b) For mistakes in bid alleged after award, the contracting officer's proposed determination, prepared in accordance with FAR 14.406-4, will be forwarded to the General Counsel (025) through the Deputy Assistant Secretary for Acquisition and Materiel Management (93B) for legal coordination. The results of this coordination will be transmitted to the contracting officer by the Deputy Assistant Secretary for Acquisition and Materiel Management (93B). The final determination on the alleged mistake in bid after award will be made by the contracting officer.

(c) The Deputy Assistant Secretary for Acquisition and Materiel Management (93B) will maintain the agency records of mistakes in bids after award required by FAR 14.406-4.

[49 FR 12599, Mar. 29, 1984, as amended at 54 FR 30044, July 18, 1989]

814.407 Award.

814.407-70 Award when only one bid is received.

When only one bid is received in response to an invitation for bids, such bid may be considered and accepted if (a) the specifications used in the invitation were not restrictive, (b) adequate competition was solicited, (c) the price is reasonable, and (d) the bid is otherwise in accordance with the invitation for bids. Such determination will be made in writing, and included on or attached to the abstract of bids.

814.407-71 Recommendation for award (construction).

(a) For Central Office contracts, the Deputy Assistant Secretary for Facilities, after analyzing all bids received, will submit a memorandum to the Secretary (00) recommending award or other disposition of the project. A copy of each of the following will accompany the memorandum:

(1) The invitation.
(2) Each bid received.
(3) The abstract.
(4) Any other pertinent data.

(b) On facility level contracts, the Chief, Engineering Service, will analyze all bids received and submit to the contracting officer a memorandum recommending award or other disposition of the project. However, the final decision to accept or reject the lowest responsive bid and the determination as to the responsibility of a prospective contractor shall be made by the contracting officer alone.

[49 FR 12599, Mar. 29, 1984, as amended at 54 FR 30044, July 18, 1989; 54 FR 40063, Sept. 29, 1989]

814.408 Information to bidders.

(a) Prior to award, no information as to probable acceptance or rejection of any offer shall be given to any bidder or other person outside the Department of Veterans Affairs.

(b) Except as provided in paragraphs (c) and (d) of this section, information as to performance under contract or an accepted bid is not public information and will be released to persons outside VA only upon the authority of the immediate supervisor of the contracting officer.

(c) Except as provided in paragraph (d) of this section, the contracting officer may furnish information as to performance under a contract to those having a legitimate interest, such as banks, other financial companies and Government departments and agencies.

(d) When litigation is involved, all information will be furnished through the General Counsel (025).

[49 FR 12599, Mar. 29, 1984, as amended at 54 FR 30045, July 18, 1989; 54 FR 40063, Sept. 29, 1989]

PART 815—CONTRACTING BY NEGOTIATION

Subpart 815.5—Unsolicited Proposals

Sec.
815.502 Policy.
815.504 Advance guidance.
815.506 Department procedures.
815.506-1 Receipt and initial review.

Subpart 815.6—Source Selection

815.607 Disclosure of mistakes before award.

Subpart 815.8—Price Negotiation

Sec.
815.800 Scope of subpart.
815.804-70 Preproduction and start-up and other nonrecurring costs.
815.805-4 Technical analysis.

Subpart 815.70—Special Negotiation Authorities

815.7001 Personal or professional services.
815.7002 Medical schools and related institutions.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12604, Mar. 29, 1984, unless otherwise noted.

EDITORIAL NOTE: For nomenclature changes affecting Part 815, see 52 FR 28559, July 31, 1987, and 52 FR 42439, Nov. 5, 1987.

Subpart 815.5—Unsolicited Proposals

SOURCE: 51 FR 6005, Feb. 19, 1986, unless otherwise noted.

815.502 Policy.

It is the policy of VA to promote the submission of unsolicited proposals as a means to obtain technological and innovative efficiencies which will further the mission of the Department. However, it must be emphasized that such unsolicited proposals must meet the criteria set forth in FAR 15.507(b) before such a proposal can be considered for negotiation. Prior to investment of contractor effort and VA administrative processing advance guidance pursuant to FAR 15.504 and 815.504 is crucial.

[51 FR 6005, Feb. 19, 1986, as amended at 54 FR 40063, Sept. 29, 1989]

815.504 Advance guidance.

(a) Any inquiries from a potential offeror of an unsolicited proposal shall be referred to the appropriate VA contact point designated in 815.506(a). The contact point will determine the nature of the potential proposal and determine what technical/professional disciplines need be consulted to determine the VA need for such a proposal and the likelihood that a formal proposal would be favorably reviewed. In consultation with such technical/professional offices, the VA contact point will inform the potential proposer of any additional information required to provide advance guidance as well as the information specified in FAR 15.504.

(b) The FAR contact point will maintain a record of advance guidance provided and the disposition/recommendation regarding the potential offer.

815.506 Department procedures.

(a) The Chief, Acquisition and Materiel Management Service, servicing the field facility and the Director, VA Marketing Center, Hines, Illinois are designated as the VA contact points for unsolicited proposals submitted at the facility level. The Deputy Assistant Secretary for Acquisition and Materiel Management is designated as the VA contact point for all unsolicited proposals received at VA Central Office.

(b) Each unsolicited proposal received by the Department of Veterans Affairs will be submitted to the appropriate contact point.

(c) The VA contact point will review the unsolicited proposal and ensure that it is complete as prescribed in FAR 15.505. If required information is not submitted, the VA contact point will:

(1) Determine if advance guidance as specified in FAR 15.504 is necessary (2) request that the offeror provide the necessary information if it is determined that the formal evaluation prescribed in FAR 15.506-2 is appropriate; and (3) establish an estimated due date for completion of the review process.

[51 FR 6005, Feb. 19, 1986, as amended at 54 FR 40063, Sept. 29, 1989; 54 FR 42508, Oct. 17, 1989]

815.506-1 Receipt and initial review.

(a) When VA contact point determines that a comprehensive evaluation is to be undertaken (i.e., the proposal complies with the requirements in FAR 15.506-1(a) and is related to the mission of VA), the offeror will be contacted to ensure that all data that should be restricted in accordance with FAR 15.509 has been identified.

(b) The VA contact point will maintain a log of all unsolicited proposals which will be evaluated. The log will indicate:

(1) The date the proposal was received;

(2) The date that the unsolicited proposal has been determined to warrant a comprehensive evaluation;

(3) A description of the proposal;

(4) The offices requested to evaluate the proposal and the date such offices are requested to return their evaluations;

(5) The date the reviewing offices finalize their respective evaluation; and

(6) The final disposition of the proposal.

(c) Each office which is assigned responsibility for reviewing an unsolicited proposal will be advised of the need to evaluate the proposal against the criteria set forth in FAR 15.507(a) (1) through (3), i.e., is the proposal available to the Government without restriction from another source, does it closely resemble a pending competitive acquisition, is the proposal lacking in demonstrated innovation or uniqueness? If the reviewers conclude in the affirmative as to any one of these questions, the VA contact point shall be advised and return the proposal to the proposer.

(d) With regard to an unsolicited proposal being processed at a field facility, if the reviewing offices conclude that the unsolicited proposal should be accepted and provide the justification and certification required by FAR 15.507, the VA contact point will obtain the prior approval of the Deputy Assistant Secretary for Acquisition and Materiel Management (93) prior to proceeding with negotiation. In order to obtain the approval, the VA contact point will submit all necessary documentation supporting the noncompetitive negotiation including any justification and approval required by FAR Subpart 6.3 and results of any synopsis required by FAR Subpart 5.2 The Deputy Assistant Secretary for Acquisition and Materiel Management will coordinate the proposal with the cognizant VA Central Office program official(s) and furnish the VA contact point with the final decision.

(e) All copies of the unsolicited proposal will be controlled by the contact point by numbering each copy. If a reviewing office requires additional copies, the reviewing office will obtain approval of the VA contact point prior to duplication, numbering the copies as specified by the contact point. All copies will be returned to the VA contact point once review is completed.

[51 FR 6005, Feb. 19, 1986, as amended at 54 FR 40063, Sept. 29, 1989]

Subpart 815.6—Source Selection

815.607 Disclosure of mistakes before award.

The Head of the Contracting Activity (as defined in 802.1) is delegated authority to permit correction of mistakes in proposals before award consistent with FAR 15.607.

[54 FR 45736, Oct. 31, 1989]

Subpart 815.8—Price Negotiation

815.800 Scope of subpart.

The principles set forth in FAR Subpart 15.8, as well as those in this subpart, on the basic policy, pricing techniques, requirements for cost or pricing data, and the evaluation and audit of cost and pricing data apply to all negotiated cost-reimbursement, time-and-material, labor hour, firm fixed-price contracts and contract modifications. These principles also apply to annual revisions of prices under cost-reimbursement contracts as well as to the negotiation of initial prices.

815.804-70 Preproduction and start-up and other nonrecurring costs.

In evaluating start-up and other nonrecurring costs, the extent to which these costs are included in the proposed price and the intent to absorb or recover any such costs in any future noncompetitive procurement or other pricing action will be determined. The contracting officer will ascertain, with the assistance of the Assistant Inspector General for Policy, Planning and Resources (53), as required or considered necessary, that payment of such costs is not duplicated. For example, cost of equipment paid for by the Government through a setup or connection agreement will not be included in depreciation costs of a subsequently negotiated agreement.

[49 FR 12604, Mar. 29, 1984, as amended at 50 FR 792, Jan. 7, 1985; 54 FR 40063, Sept. 29, 1989]

815.805-4 Technical analysis.

(a) Contracting officers are responsible for the technical and administrative sufficiency of the contracts they enter into and ensuring that all legal and technical reviews are accomplished. To this end, initial and revised pricing of all negotiated prime contracts (including subcontract pricing under them) and contract modifications will be subject to technical analyses to the degree the contracting officer deems necessary (see 801.602-70 for required legal reviews). Technical analyses of the proposals will be requested by the contracting officer from the appropriate technical personnel to address, as a minimum, the items set forth in FAR Subpart 15.805-4. Contracting officers shall not begin negotiation of or award any negotiated contracts or contract modifications before receipt, analysis and consideration of documented technical evaluations for every procurement action requiring such analysis under the conditions prescribed in FAR 15.805-4. The results of such analyses will be documented in the contract file and will also be made available to the auditor performing the preaward audit required by 815.805-5.

(b) When, in the opinion of the contracting officer, the complexity of the proposed contract warrants, he/she will submit the proposed contract to the Deputy Assistant Secretary for Acquisition and Materiel Management (93) for review and comment. When deemed advisable, the Deputy Assistant Secretary for Acquisition and Materiel Management (93) will request the General Counsel to accomplish a legal review. This review is in addition to the legal review specified in 801.602-70.

Subpart 815.70—Special Negotiation Authorities

815.7001 Personal or professional services.

(a) Contracts with medical schools, clinics, and any other group or individual capable of furnishing such services to provide scarce medical specialist services at Department of Veterans Affairs facilities (including but not limited to services of physicians, dentists, podiatrists, optometrists, nurses, physicians' assistants, expanded function dental auxiliaries, technicians, and other medical support personnel) will be negotiated under authority of 38 U.S.C. 4117. Such contracts must provide that services are rendered at Department of Veterans Affairs facilities.

(b) Contracts with hospitals (or medical installations having hospital facilities or organ banks, blood banks, or similar institutions) or medical schools, or clinics in the medical community for:

(1) The mutual use, or exchange of use, of specialized medical resources (whether equipment, space or personnel, which, because of cost limited availability, or unusual nature, are either unique in the medical community or are subject to maximum utilization only through mutual use) when such a contract will obviate the need for a similar resource to be provided in a Department of Veterans Affairs facility; or

(2) The mutual use, or exchange of use, of specialized medical resources in a Department of Veterans Affairs facility, which have been justified on the basis of veterans' care, but which are not utilized to their maximum effective capacity will be negotiated under authority of 38 U.S.C. 5053.

(c) Contracting officers may include one or two 1-year prepriced options for extensions of proposed contracts for scarce medical specialist and specialized medical resources. When a prepriced option has not been used, the authority to approve the award of a new contract with the current contractor for extension of a scarce medical specialist or specialized medical resource is delegated to the Medical District Director under the circumstances specified in paragraph (d) of this section. Except as provided in paragraphs (d) and (e) of this section, proposed contracts will be submitted for approval to the Associate Deputy Chief Medical Director (10B/EMS), VA Central Office at least 60 days prior to effective date of the proposed contract.

(1) Complete justification for all contracts will be submitted, as approval depends on the adequacy of the justification.

(2) Proposed contracts under authority of 38 U.S.C. 4117 will be submitted in five copies, and contracts under authority of 38 U.S.C. 5053 will be submitted in six copies.

(3) The transmittal letter and each supporting document will be submitted in the same number of copies as the contract. As an incomplete submission delays processing of the proposed contract in Central Office, care should be exercised to assure that the proper number of copies are submitted, and that submissions are complete (e.g., complete name and address of the other party or parties to the contract are included).

(4) Proposed contracts of the type specified in paragraphs (b) (1) and (2) of this section will be accompanied by a recommendation of the facility director as to the geographical limits to be applied to the medical community.

(5) Contracting officers must send a copy of each signed contract, negotiated under the authority of either 38 U.S.C. 4117 or 38 U.S.C. 5053, to the Director, Emergency Management and Resource Sharing Service (10B/EMS), within ten days of execution. This requirement also applies to any contract modification issued to exercise options to extend contract periods.

(d) Proposals to negotiate a new contract with the current contractor under the authority of 38 U.S.C. 5053 or 38 U.S.C. 4117 may be approved by the appropriate Medical District Director when such proposals meet the following conditions:

(1) For specialized medical resources agreements, (i) no new resources are being added to the contract, (ii) and no individual cost item that is being acquired from the contractors will increase the cost more than 5 percent over the cost for that same item on the previous contract. (Resources may

be deleted from the contract without Central Office approval, but only if such deletions do not effectively result in an increase in the cost of an individual item or of the total contract in excess of 5 percent over the cost of the contract).

(2) The sharing proposal has been reviewed for legal sufficiency by the District Counsel responsible for servicing the Department of Veterans Affairs facility involved. The District Counsel shall be sent, along with the sharing proposal, a copy of the previous sharing agreement for the same services so that a comparison can be made of the two documents.

(3) All contract clauses required by Chapters 1 and 8, Title 48, Code of Federal Regulations, are included in the proposal.

(4) Equal Employment Opportunity clearance has been obtained, when required (see Part 822).

(5) Certified cost or pricing data was obtained from the contractor when required by FAR 15.804. Cost or pricing data was submitted by the contractor on SF 1411, Contract Pricing Proposal Cover Sheet, in accordance with FAR 15.804-6.

(6) When cost or pricing data was required, an audit was obtained in accordance with FAR 15-805-5 and 815.805-5.

(7) When cost or pricing data was required, a technical analysis has been performed on the contractor's proposal in accordance with FAR 15.805-4 and 815.805-4.

(e) Contracting officers may exercise an option to extend a contract when the contract includes an option to extend. This may be done without further review.

(f) Contracts for professional or technical services with private or public agencies not specifically authorized in any other section of Title 38, United States Code, may be acquired under 38 U.S.C. 213 and negotiated under FAR Part 15 when the cost of such services will exceed the small purchase limitation (See FAR Part 13.) (See Subpart 837.2 regarding controls over the procurement of consulting, management, administrative and professional services.)

(g) See 837.104 regarding personal service contracts having an employer-employee relationship.

[51 FR 23069, June 25, 1986, as amended at 52 FR 28559, July 31, 1987; 52 FR 49017, Dec. 29, 1987; 54 FR 40064, Sept. 29, 1989; 54 FR 42508, Oct. 17, 1989]

815.7002 Medical schools and related institutions.

(a) Contracts of the type specified in 815.7001, paragraphs (a) and (b), and 813.103(a) may be negotiated with medical schools and related institutions without competition only to the extent as specified in 806.302-5. Such contracts shall be negotiated under the authority of this 815.7002 and 38 U.S.C. 4117 and 38 U.S.C. 5053, as appropriate, and 41 U.S.C. 253(c)(5).

(b) Scarce medical specialist contracts as specified in paragraph 815.7001(a), which are not negotiated with an institution affiliated with VA pursuant to 38 U.S.C. 4114, are subject to the requirements for full and open competition as specified in FAR Part 6 and VAAR Part 806. Such contracts shall be competed unless other than full and open competition is justified in accordance with FAR and VAAR and as authorized by FAR 6.302.

(c) The requirements of 815.7001, paragraphs (c) and (d), shall be applicable to all procurement actions specified in paragraphs (a) and (b) of this section.

[51 FR 23069, June 25, 1986 and 52 FR 28559, July 31, 1987, as amended at 54 FR 40064, Sept. 29, 1989]

PART 816—TYPES OF CONTRACTS

Subpart 816.1—Selecting Contract Types

Sec.
816.102 Policies.

Subpart 816.3—Cost-Reimbursement Contracts

816.306 Cost-plus-fixed-fee contracts.

Subpart 816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

816.603 Letter contracts.

Subpart 816.70—Unauthorized Agreements

816.7001 Letters of availability.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 816.1—Selecting Contract Types

816.102 Policies.

(a) Contracts for supplies or nonpersonal services awarded (except for small purchases under Part 813 and FAR Part 13) are to be of the following types:

(1) Firm fixed price for a period of one year or less.

(2) Firm fixed price for one year with options for succeeding years. (See 817.202 and FAR Subpart 17.2.)

(3) Fixed price with economic price adjustment. (See FAR 16.203).

(b) Contracts of the type specified in paragraph (a)(3) of this section which include an economic price adjustment provision other than those contracts awarded by the National Cemetery System for monuments or those contracts that contain the clause for service contracts (FAR 22.1006(c)) require the prior approval of the Deputy Assistant Secretary for Acquisition and Materiel Management (90). The request for approval shall clearly set forth the need for the provision.

(c) Contracts of the type specified in paragraphs (a) (2) and (3) of this section are to be entered into only when such contracts are clearly shown to be advantageous to the Department of Veterans Affairs. The contracting officer is to document the contract file to show the specific and compelling reasons for selection of the particular type contract.

(d) Any contract involving direct obligation of appropriations and which extends beyond the appropriation of the year in which the contract period begins or which is for more than one fiscal year, is to contain provisions to the effect that:

(1) It is made for the period covered by the contract, subject to the availability of appropriations in the ensuing year(s), and

(2) No service is to be performed by the contractor after September 30 of each fiscal year unless and until specifically authorized by the contracting officer or representative.

(e) Architect-engineer contracts, construction contracts, or professional engineer contracts, financed by "no year appropriations" are not subject to the requirements of paragraph (d) of this section.

[49 FR 12607, Mar. 29, 1984, as amended at 50 FR 792, Jan. 7, 1985; 54 FR 30045, July 18, 1989]

Subpart 816.3—Cost-Reimbursement Contracts

816.306 Cost-plus-fixed-fee contracts.

(a) Contracts of this type may be entered into only after the contracting officer has made the determination required by FAR 16.301-3(c). The determination is to be made a part of the contract file.

(b) The amount of the fee to be paid or allowed to a prime contractor or subcontractor under this type of contract shall be negotiated by the contracting officer within the statutory limitations. (See FAR 15.903(d).)

[49 FR 12607, Mar. 29, 1974]

Subpart 816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

816.603 Letter contracts.

Prior to execution of a letter contract, the administration head or key staff official concerned shall approve the contracting officer's written determination that no other type contract is suitable (See FAR 16.603-3). The determination is to establish the limit of the effectiveness of the letter contract; i.e., the date by which the definitive contract is to be executed, within the limits established in FAR 16.603-2 (c) and (d).

[49 FR 12607, Mar. 29, 1984, as amended at 50 FR 792, Jan. 7, 1985; 54 FR 40064, Sept. 29, 1989]

Subpart 816.70—Unauthorized Agreements

816.7001 Letters of availability.

(a) *Description.* A letter of availability (sometimes inappropriately called a letter of intent) is a letter to a supplier primarily for the purpose of obtaining a place on the supplier's production or delivery schedule for long lead time items. Such a letter typically indicates that products or services are being considered for procurement, but that the statement of intent is not to be construed as a commitment. Such letters of availability are sometimes solicited by prospective contractors, or they may be originated by Government personnel. A letter of availability is distinguished from a letter contract which is specifically authorized in FAR 16.603.

(b) *Policy.* (1) Unless specifically authorized by the Deputy Assistant Secretary for Acquisition and Materiel Management, letters of availability are not to be utilized for the following reasons:

(i) While such letters of availability may disclaim Government liability, they may induce potential contractors to initiate costly preparations in anticipation of contract award.

(ii) Procurements announced in such letters do not always materialize. The result may be costly to the Government, the prospective contractor, or both. If the author of the letter of availability is an authorized contracting officer of the Department, the Government may be bound by action, even though the action is contrary to sound procurement practices and/or fiscal regulations. If the author of the letter of availability lacks procurement authority, the prospective contractor may incur substantial expenditures which may not be recovered from the Government, but for which the prospective contractor may seek to hold the unauthorized author personally liable.

(iii) The issuance of a letter of availability may violate the "Anti-Deficiency Act" (31 U.S.C. 1341).

(2) It is recognized that potential contractors have a need to obtain procurement information at the earliest possible moment in order to make timely preparations. To this end, procurement personnel are expected to act as efficiently and expeditiously as possible on all procurement actions.

[49 FR 12607, Mar. 29, 1974, as amended at 54 FR 30044, July 18, 1989; 54 FR 40064, Sept. 29, 1989]

PART 817—SPECIAL CONTRACTING METHODS

Subpart 817.1—Multi-Year Contracting

Sec.
817.102 Policy.
817.102-1 Uses.

Subpart 817.2—Options

817.202 Use of options.

Subpart 817.4—Leader Company Contracting

817.402 Limitations.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12608, Mar. 29, 1984, unless otherwise noted.

Subpart 817.1—Multi-Year Contracting

817.102 Policy.

817.102-1 Uses.

(a) Pursuant to Title 38, United States Code, Chapter 1, Section 114 (as amended by Pub. L. 100-322), multiyear contracting not exceeding 5 years is authorized for obtaining supplies and services for use in Department of Veterans Affairs health care facilities when the Secretary has made the following determinations:

(1) Appropriations are available for obligation for the total payments for the fiscal year the contract is entered into plus the estimated amount of any cancellation charges.

(2) The contract is in the best interest of the Government due to the effect it would have in:

(i) Reducing cost;

(ii) Achieving contract administration and other efficiencies;

(iii) Increasing quality contract performance;

(iv) Encouraging effective competition.

(3) During the contract period:

(i) There is a continuing need for the supplies or services;

(ii) There is little likelihood of substantial changes in need for the supplies and services in terms of quantity or rate of delivery; and

(iii) The specifications for the supplies or services are expected to be reasonably stable.

(4) The risks relating to a prospective contractor's ability to perform in accordance with the specifications and other contract terms are not excessive;

(5) The use of a multiyear contract will not inhibit competition from small business firms;

(6) In the case of a pharmaceutical item for which a patent has expired less than 4 years before the solicitation issue date, there is no substantial likelihood that increased competition will occur during the term of the contact that would make the contract prices higher than would be reasonable.

(b) The authority of the Secretary to enter into multiyear contracts and to make the determinations specified in 817.102-1(a) of this section is delegated as follows:

(1) *Heads of contracting activities.* For contracts not requiring legal/technical reviews pursuant to 801.602-70 (for purposes of determining applicability of the thresholds, the total dollar amount of the contract over its full multiyear term will be used), and which do not contain a first year cancellation ceiling which exceeds 20 percent of the total dollar amount of the contract over the full multi-year term.

(2) *Assistant Secretary for Acquisition and Materiel Management,* will approve all proposed uses of multiyear contracts not authorized for approval by heads of contracting activities. For approval purposes, the head of the contracting activity will justify and document the use of a multiyear contract against each of the criteria specified in 817.102-1 (a)(1) through (a)(6) of this section. The justification will additionally delineate the cancellation ceiling and the method used for calculating that ceiling and will specify the advantages of multiyear contracts over other alternative methods, e.g., option year contracts.

(c) Cancellation ceilings will be carefully developed in accordance with FAR 17.103-1 and VAAR 817.103-1.

[54 FR 980, Jan. 11, 1989]

Subpart 817.2—Options

817.202 Use of options.

All solicitations developed pursuant to Office of Management and Budget Circular A-76 (Revised) cost comparisons will provide for one year renewal options as prescribed in FAR Subpart 17.2. Requests to use less or more than the prescribed contract period for Circular A-76 (Revised) cost comparisons will be forwarded to the Director, Office of Acquisition and Materiel Management (90).

[49 FR 12608, Mar. 29, 1984, as amended at 54 FR 980, Jan. 11, 1989]

Subpart 817.4—Leader Company Contracting

817.402 Limitations.

(a) Except as provided in 817.402(b), no leader company contracts shall be initiated or consummated.

(b) The Deputy Assistant Secretary for Acquisition and Materiel Management (90) may designate a contracting officer to enter into a leader company contract when considered beneficial to the Department and the Government. When a contracting officer is designated the authority to enter into a leader company contract, the designation will be by name for a specific contract. The proposed contract with a determination and finding will be submitted for legal review in accordance with 801.602-71.

[49 FR 12608, Mar. 29, 1984, as amended at 54 FR 980, Jan. 11, 1989; 54 FR 40064, Sept. 29, 1989]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Sec.
819.000 Scope of part.

Subpart 819.2—Policies

819.201 General policy.
819.202-5 Data collection and reporting requirements.
819.202-70 Additional responsibilities.

Subpart 819.5—Set-Asides for Small Business

819.502-2 Total set-asides.
819.502-3 Partial set-asides.

Subpart 819.6—Certificates of Competency and Determinations of Eligibility

819.602-3 Appealing Small Business Administration's decision to issue Certificates of Competency.

Subpart 819.8—Contracting With the Small Business Administration (The 8(a) Program)

819.801 General.
819.803 Selecting acquisitions for the 8(a) program.
819.804 Agency evaluation of the Small Business Administration's request for a commitment.
819.806-2 Estimating the current fair market price.
819.806-3 Pricing review by the Small Business Administration.
819.806-4 Funding business development expense.
819.807-70 Commitments of the Office of Facilities' funded projects for the 8(a) program.
819.809-70 Procurement of supplies, services, and research and development.
819.809-71 Procurement of construction.

Subpart 819.70—Veteran-Owned and Operated Small Business

819.7001 Policy.
819.7002 Definition.
819.7003 Procedure.
819.7004 Waiver of the use of Vietnam era or disabled veteran-owned firms.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Editorial Note: For nomenclature changes affecting Part 819, see 52 FR 37317, Oct. 6, 1987.

Source: 49 FR 12608, Mar. 29, 1984, unless otherwise noted.

819.000 Scope of part.

This subpart sets forth the Department of Veterans Affairs small business program including section 8(a) contracts with Small Business Administration (SBA) and unilateral set-asides. It establishes responsibility for making such determinations, reviewing determinations and evaluation of the program.

[49 FR 12608, Mar. 29, 1984, as amended at 54 FR 40064, Sept. 29, 1989]

Subpart 819.2—Policies

819.201 General policy.

(a) The Director, Office of Small and Disadvantaged Business Utilization (OSDBU) (005SB), supervises and directs the OSDBU staff. OSDBU will be responsible for the overall supervision of the Department of Veterans Affairs Small and Disadvantaged Business Utilization program and will assist administrations and key staff officials in developing their respective small business programs. The OSDBU staff will also assist contracting officers with duties contained in 819.202-70 (g), (h), (i), (j), and (k).

(b) The Deputy Assistant Secretary for Facilities will develop and coordinate the Department small business program, as it affects construction projects, with the OSDBU.

(c) The Director, Veterans Canteen Service (VCS), will designate an employee of his/her organization to serve as liaison between the VCS and the Office of Small and Disadvantaged Business Utilization on small business problems affecting the VCS.

(d) Director, National Cemetery System, Chief Benefits Director, Deputy Assistant Secretary for Facilities, Director, Office of Administration, Director, VA Marketing Center and Directors of Department of Veterans Affairs field facilities with Supply activities will designate an employee of their respective organizations to serve as a small and disadvantaged business specialist. This employee will be a full-time employee of the respective contracting activity, will be familiar with the supplies and services purchased at the activity, and will be fully cognizant of the regulations implementing the Small Business Act. The principal duties will include assisting the Small Business Administration Procurement Center Representative (if assigned) in activities and functions relating to sections 8 and 15 of the Small Business Act. The name, telephone number, and mailing symbol of each designee and any successor will be forwarded to the Director, Office of Small and Disadvantaged Business Utilization, through the Deputy Assistant Secretary for Acquisition and Materiel Management.

[49 FR 12608, Mar. 29, 1984, as amended at 52 FR 37317, Oct. 6, 1987; 54 FR 40064, Sept. 29, 1989]

819.202-5 Data collection and reporting requirements.

Administration heads, staff office directors and heads of contracting activities will, in addition to the responsibilities designated in FAR 19.202-5, cooperate with the Office of Small and Disadvantaged Business Utilization in formulating specific socio-economic procurement goals and providing other data necessary for goal assessment.

[49 FR 12608, Mar. 29, 1984, as amended at 54 FR 40064, Sept. 29, 1989]

819.202-70 Additional responsibilities.

In addition to the duties designated in FAR 19.202, VA contracting officers will perform the following functions in furtherance of the small business and Labor Surplus Area (LSA) programs:

(a) Develop a plan of operation to increase the share of contracts and purchase orders awarded to small business and LSA concerns.

(b) Promote the disadvantaged business program through the SBA 8(a) procedures set forth in Subpart 819.8.

(c) Review the types and classes of items and services to be purchased to determine the applicability of individual small business set-asides and LSA set-asides. Class set-asides, established in accordance with criteria in FAR 19.503, shall be reviewed at least annually to determine whether items or services procured under a unilateral or joint set-aside should be modified or withdrawn. Updated lists of acquisitions reserved for small business on a class basis shall be maintained by heads of contracting activities.

(d) Make maximum utilization of the SBA small business source list (i.e., Procurement Automated Source System) when considering the disposition of all procurement requirements. Small business source lists are available through the SBA Regional Offices.

(e) Assure that small business firms are identified on bid abstracts.

(f) Assure that specifications are not unduly restrictive, thereby enabling small business participation to the maximum extent feasible.

(g) Assist and counsel small business firms with individual problems.

(h) Provide for counseling nonresponsive or nonresponsible small business bidders to help qualify them for future awards.

(i) Attend conferences and meetings publicizing the small business program.

(j) Promote the award of research contracts to small business and LSA firms.

(k) Promote goals for small business, small business set-asides, small business subcontracting, 8(a) procurements, labor surplus area set-asides, and purchases from women-owned businesses.

(l) Review all urgent and sole source procurements to determine that they are sparingly made, thoroughly documented and approved by the head of the contracting activity.

(m) If the contracting officer is assigned an SBA Resident Procurement Center Representative, assure that the representative is provided ten (10) working days to review any solicitation which meets the dollar threshold for which small business and small disadvantaged business subcontracting plans are required. Additionally, prior to the execution of any negotiated contractual document requiring a subcontracting plan, the total procurement package including the proposed subcontracting plan will be made available to the Resident Procurement Center Representative for ten (10) working days for review. The Procurement Center Representative may submit recommendations, which will be advisory in nature, to the contracting officer. The Procurement Center Representative will also be provided a copy of the subcontracting plan finally negotiated by the contracting officer. A copy of any subcontracting plan submitted pursuant to a contract obtained through sealed bidding will also be provided the Resident Procurement Center Representative upon execution of the contractual document.

(n) Assure that the small and disadvantaged business specialist notifies the SBA within five (5) working days of the award of contracts, amendments, or modifications that contain subcontracting plans. The notification will contain the contractor's name and address, place of performance, dollar amount, performance period, description of contract item or items, and name and address of the contracting officer. A copy of the award document is sufficient for these purposes. The notification will be sent in accordance with FAR 19.705-6.

(o) Assure that plans are forwarded as specified in FAR 19.705-6(b).

[49 FR 12608, Mar. 29, 1984, as amended at 50 FR 792, Jan. 7, 1985; 51 FR 23070, June 25, 1986; 52 FR 28559, July 31, 1987]

Subpart 819.5—Set-Asides for Small Business

819.502-2 Total set-asides.

(a) When a total small business set-aside is made, one of the following statements, as applicable, will be included in the solicitation for bids:

(1) Notice of total small business set-aside, page —, applies to all items in this solicitation.

(2) Notice of total small business set-aside, page —, applies to items — through — in this solicitation.

(b) When a total small business-LSA set-aside is made, one of the following statements, as applicable, will be placed on the face of the solicitation:

(1) Notice of total set-aside for small business concerns agreeing to perform as LSA concerns, page —, applies to all items in this solicitation.

(2) Notice of total set-aside for small business concerns agreeing to perform as LSA concerns, page —, applies to items — through — in this solicitation.

(c) Contracting officers must ensure that appropriate product or service classification and the related size standard are included in each solicitation.

(d) All proposed procurement for construction anticipated to cost between $10,000 and $3 million and all proposed procurements for architect-engineer services construction projects of $3 million and less will be considered as though SBA had initiated a set-aside request. Determinations of the need to deviate from this policy made by the head of a contracting activity will require review by the Director, Office of Small and Disadvantaged Business Utilization.

[49 FR 12608, Mar. 29, 1984, as amended at 50 FR 792, Jan. 7, 1985]

819.502-3 Partial set-asides.

When, in accordance with the provisions of FAR 19.502-3, it is determined that a particular procurement will be partially set aside for exclusive small business participation or small business/labor surplus participation, the solicitation for bids will have appropriate product or service classification, appropriate size standard and whichever of the following statements is applicable, placed on the face page:

(a) Notice of partial set-aside for small business concerns located in labor surplus areas, page —, applies to Item — through Item — in this solicitation.

(b) Notice of partial small business set-aside, page —, applies to Item — through Item — in this solicitation.

[50 FR 792, Jan. 7, 1985]

Subpart 819.6—Certificates of Competency and Determinations of Eligibility

819.602-3 Appealing Small Business Administration's decision to issue Certificates of Competency.

Formal VA appeals of an initial concurrence by the SBA Central Office in an SBA Regional Office decision to issue a Certificate of Competency (CoC) will be processed as follows:

(a) When the contracting officer believes that VA should formally appeal the concurrence by the SBA Central Office in an SBA Regional Office decision to issue a CoC, the contracting officer will so notify the Deputy Assistant Secretary for Acquisition and Materiel Management (93B) in writing within five business days after receipt of the SBA Central Office's written confirmation of its determination. Within ten business days of the contracting officer's receipt of the SBA's written confirmation (or within a period acceptable to VA and the SBA), the Deputy Assistant Secretary for Acquisition and Materiel Management (93B) will advise the SBA Central Office that VA intends to file a formal appeal.

(b) Within ten business days of the contracting officer's receipt of the SBA Central Office's written confirmation, the contracting officer will furnish an original and one copy of the appeal file to the Deputy Assistant Secretary for Acquisition and Materiel Management (93B). The file must contain a copy of the bid/offer from the firm considered nonresponsible, a copy of the bid/offer from the firm otherwise in line for award, a copy of the bid, a copy of the bid abstract, a copy of SBA's CoC Review Committee report, a copy of all correspondence with SBA on the matter, and the contracting officer's narrative statement establishing the error, omission, or other basis for disputing SBA's proposed responsibility determination.

(c) The Deputy Assistant Secretary for Acquisition and Materiel Management (93B) will review the file prepared by the contracting officer. If the contracting officer's position is accepted, the Deputy Assistant Secretary for Acquisition and Materiel Management (93B) will transmit the formal appeal to the SBA Central Office within ten business days after notifying that office of VA's intent to appeal (or within a period acceptable to VA and the SBA). The contracting officer will be informed of the final SBA decision.

(d) If, after the Central Office review, it is decided that a formal appeal should not be made to the SBA, the contracting officer will be advised of this decision and that the CoC should be accepted by VA. The SBA Central Office will also be advised that VA will not pursue its formal appeal. If the decision concerns major construction projects and the Office of Facilities disagrees with the decision made by the Deputy Assistant Secretary for Acquisition and Materiel Management, the matter will be referred to the Senior Procurement Executive for a final VA determination.

[52 FR 46083, Dec. 4, 1987, as amended at 54 FR 40064, Sept. 29, 1989]

Subpart 819.8—Contracting With the Small Business Administration (The 8(a) Program)

819.801 General.

(a) No contract will be entered into with SBA under section 8(a) of the Small Business Act (15 U.S.C. 637(a)) unless a certification is made by the Administrator of that agency, or designee, that SBA is competent to perform the contract.

(b) When it is determined that the requirements of the Department of Veterans Affairs are appropriate for inclusion in this program, the contracting officer will make this fact known to proper officials of the SBA regional office servicing his/her area. However, when projects funded from minor construction appropriation (between $400,000 and $2 million) are proposed for 8(a) acquisition, the Director, Office of Small and Disadvantaged Business Utilization (OSDBU) (005SB), shall be contracted by telephone or notified in writing in order to afford the OSDBU an opportunity to identify possible 8(a) sources prior to apprising SBA officials. If the certification required by paragraph (a) of this section is received, the Department of Veterans Affairs contracting officer will secure from SBA the name(s) and location(s) of their subcontractor(s) and the unit price(s) to be paid. Should these prices be within a range acceptable to the Department of Veterans Affairs, the contracting officer will notify SBA of acceptance.

(c) The contract will be made between the Department of Veterans Affairs and SBA and will be administered by the Department of Veterans Affairs.

(d) In addition to meeting the requirements of 801.602-70, contracting officers will secure cost and pricing data prescribed in FAR 15.804-2 and 815.804-2 when negotiating contracts under the SBA 8(a) program. Contracting officers will request an audit in accordance with 815.805-5 on proposals in excess of $500,000 before negotiating any contract or modification.

[49 FR 12608, Mar. 29, 1984, as amended at 50 FR 792, Jan. 7, 1985; 54 FR 40064, Sept. 29, 1989]

819.803 Selecting acquisitions for the 8(a) program.

The contracting officer will specify in writing the time limit for SBA to propose an acceptable 8(a) subcontractor. The time limit should be between 30 and 45 days, but may be extended by the contracting officer.

[50 FR 793, Jan. 7, 1985]

819.804 Agency evaluation of the Small Business Administration's request for a commitment.

(a) The contracting officer will notify SBA in writing of the time limit for contract negotiations in accordance with FAR 19.804(b). The time limit, as a minimum, should be 45 days, but may be extended by the contracting officer.

[50 FR 793, Jan. 7, 1985]

819.806-2 Estimating the current fair market price.

(a) Estimating the fair market price is a crucial initial step in determining what is a reasonable price for a negotiated 8(a) contract. For supplies and equipment, previous prices paid under competitive conditions, adjusted for inflation, may provide necessary data to make such an estimate.

(b) Estimating fair market price for such services as architect-engineer and construction may be accomplished through independent cost estimates and other pertinent data obtained from SBA when the estimated fair market price is not fully supportable from available documentation (see FAR 19.806-2(a)).

[52 FR 37317, Oct. 6, 1987]

819.806-3 Pricing review by the Small Business Administration.

In order to expedite the 8(a) process, SBA should be informed as soon as a disparity between the 8(a) offered price and the estimated fair market price is determined. The SBA and the VA contracting office should collaborate to determine if the disparity is:

(a) A result of deficiencies in developing the fair market price, thereby requiring revision to the estimate;

(b) A result of overpricing by the 8(a) company, thereby requiring further efforts to negotiate a decrease in the offered price; or

(c) A legitimate differential which should be funded through the SBA business development expense.

[52 FR 37317, Oct. 6, 1987]

819.806-4 Funding business development expense.

If SBA declines to fund the business development expense, it will be reported in accordance with 819.870.

[52 FR 37317, Oct. 6, 1987]

819.807-70 Commitments of the Office of Facilities' funded projects for the 8(a) program.

Major and minor projects funded by the Office of Facilities (including those delegated to the Veterans Health Services and Research Administration) which have been committed to the 8(a) program will not be withdrawn from that program without the consent of the Office of Small and Disadvantaged Business Utilization (005SB). Requests for consent from 005SB will normally be in writing and will clearly set forth the circumstances necessitating 8(a) withdrawal. If the contracting officer determines that time does not permit a written request, an oral request will be made. Such an oral request will be confirmed in writing.

[49 FR 12608, Mar. 29, 1984, as amended at 52 FR 46083, Dec. 4, 1987; 54 FR 40064, Sept. 29, 1989]

819.809-70 Procurement of supplies, services, and research and development.

(a) Contracts for supplies, equipment and services other than construction will be prepared as any other prime contract and in accordance with FAR Subpart 19.8.

(b) The Department of Veterans Affairs contracting officer will forward the prime contract to SBA in sufficient numbers to furnish two copies to SBA and one copy to each subcontractor. SBA will return the signed original to the Department of Veterans Affairs contracting officer.

819.809-71 Procurement of construction.

Construction projects which have been selected for inclusion in this program will be contracted for as provided in this section and FAR Subpart 19.8.

(a) The contracting officer will submit, for each project so identified, the complete project listing including technical specifications, drawings and wage rates to the proper official of the appropriate SBA regional office. Should SBA select a competent subcontractor capable of performing the work, they will so certify to the Department of Veterans Affairs contracting officer. They will furnish him/her the name and complete address of the subcontractor(s), the project involved and the price(s) quoted. If the price quoted is within the range acceptable to the Department of Veterans Affairs, the contracting officer will indicate acceptance to SBA.

(b) When the contracting officer receives Standard Form 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair), signed by SBA and the subcontractor, and the performance and payment bonds, the contracting officer will forward a notice to proceed to the subcontractor.

Subpart 819.70—Veteran-Owned and Operated Small Business

SOURCE: 50 FR 793, Jan. 7, 1985, unless otherwise noted.

819.7001 Policy.

(a) Pub. L. 93-237 amended the Small Business Act by directing SBA to give "special consideration" to veterans of the Armed Forces in all SBA programs. Consistent with and in furtherance of that statute, it is the policy of the Department of Veterans Affairs to encourage participation by Vietnam era and disabled veteran-owned and operated small businesses in VA acquisitions.

(b) All VA facilities having procurement requirements for which Vietnam era veteran-owned small businesses and disabled veteran-owned small businesses are known sources, will taken affirmative action to solicit these firms and assist them in participating in VA acquisition opportunities.

819.7002 Definition.

A Vietnam era veteran-owned small business or a disabled veteran-owned small business is a small business that is at least 51 percent owned by such a veteran who also controls and operates the business. Control in this context means exercising the power to make policy decisions. Operate in this context means actively involved in day-to-day management. For purposes of this definition, eligible veterans include:

(a) Vietnam era veterans who served for a period of more than 180 days, any part of which was between August 5, 1964, and May 7, 1975, and were discharged other than dishonorably.

(b) Disabled veterans of any era with a minimum compensable disability of 30 percent; or a veteran of any era who was discharged for disability.

[49 FR 12608, Mar. 29, 1984, as amended at 54 FR 40064, Sept. 29, 1989]

819.7003 Procedure.

(a) As part of each procurement action involving other than small purchase procedures, VA contracting offices shall request, through Small Business Administration, Procurement Automated Source System (PASS), a listing of Vietnam era veteran-owned contractors capable of meeting the requirements of the particular solicitation. Firms identified on the PASS list shall be included on solicitation mailing lists, shall be incorporated in the contract file and shall be subject to audit. The Veteran-owned business representation in 852.219-70 shall be included in all solicitations and to each request for quotations.

(b) To further identify disabled veteran-owned businesses, each contracting activity shall formulate local plans to identify such firms and to include them on the facility solicitation mailing lists. State and local employment agencies and veterans' councils are potential sources for this information. In addition, the Department of Labor and the Vietnam Veterans Leadership Conference (a unit of ACTION) are provided the PASS list for use in employment assistance efforts for Vietnam era and disabled veterans.

819.7004 Waiver of the use of Vietnam era or disabled veteran-owned firms.

It is the policy of VA to provide Vietnam era and disabled veteran-owned firms every opportunity to participate in the acquisition process. A contracting office wishing to waive this policy for a particular procurement over $10,000 must first process a VA Form 90-2268. The contracting officer must clearly document on VAF 90-2268 the reasons that eligible veteran-owned firms are not intended to be solicited or quotations sought for the particular procurement. Exempt from this reporting requirement are SBA 8(a) acquisitions and Labor Surplus Area set-asides.

[50 FR 793, Jan. 7, 1985, as amended at 52 FR 37317, Oct. 6, 1987; 52 FR 46083, Dec. 4, 1987; 54 FR 40064, Sept. 29, 1989]

PART 820—LABOR SURPLUS AREA CONCERNS

Subpart 820.1—General

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

820.104 Specific policies.

Pursuant to FAR Part 20, labor surplus area (LSA) set-aside consideration will only apply to procurements above the small purchase limitation.

[49 FR 12610, Mar. 29, 1984, as amended at 54 FR 40064, Sept. 29, 1989]

PART 822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 822.3—Contract Work Hours and Safety Standards Act

Sec.

822.304 Variations, tolerances, and exemptions.

Subpart 822.4—Labor Standards for Contracts Involving Construction

822.471 Procedure for requesting determinations.
822.478 Contract terminations.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12610, Mar. 29, 1984, unless otherwise noted.

Subpart 822.3—Contract Work Hours and Safety Standards Act

822.304 Variations, tolerances, and exemptions.

When a contract is entered into for nursing home care, the clause prescribed by FAR 22.305 will be modified to reflect the variation contained in 29 CFR 5.15(d)(3) as set forth in 852.222-70.

Subpart 822.4—Labor Standards for Contracts Involving Construction

822.471 Procedure for requesting determinations.

Requests for project area or individual wage determinations will be submitted by the office or installation that will award the contract. In accordance with Department of Labor instructions, such wage determinations will be returned directly to the requesting office.

822.478 Contract terminations.

(a) Prior to terminating any contract because of violations of the labor standards provisions of the contract, contracting officers, other than those in the Office of Facilities will, through the Deputy Assistant Secretary for Acquisition and Materiel Management, present the facts in detail to the General Counsel for review. The contracting officer will be advised by the Deputy Assistant Secretary for Acquisition and Materiel Management as to the recommended action to be taken.

(b) Prior to terminating a contract managed by the Office of Facilities for labor standards violation, the contracting officer will, through the Deputy Assistant Secretary for Facilities, present the facts in detail to the General Counsel for review. The contracting officer will be advised by the Deputy Assistant Secretary for Facilities as to the recommended action.

(c) If the contract is to be terminated, the Deputy Assistant Secretary for Acquisition and Materiel Management or the Deputy Assistant Secretary for Facilities will submit the reports required by 29 CFR 5.7(d).

[49 FR 12610, Mar. 29, 1984, as amended at 54 FR 40064, Sept. 29, 1989]

PART 824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 824.1—Protection of Individual Privacy

Sec.
824.102 General.

Subpart 824.2—Freedom of Information Act

824.202 Policy.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 824.1—Protection of Individual Privacy

824.102 General.

(a) The pertinent Department rules regarding the implementation of the Privacy Act of 1974 consist of 38 CFR 1.575 through 1.584.

[49 FR 12611, Mar. 29, 1984, as amended at 54 FR 40064, Sept. 29, 1989]

Subpart 824.2—Freedom of Information Act

824.202 Policy.

Department rules implementing the Freedom of Information Act are contained in 38 CFR 1.550 through 1.559.

[49 FR 12611, Mar. 29, 1984; as amended at 54 FR 40064, Sept. 29, 1989]

PART 825—FOREIGN ACQUISITION

Subpart 825.1—Buy American Act—Supplies

Sec.
825.102 Policy.
825.102-70 Nonavailability in the United States.
825.105 Evaluating offers.
825.108 Excepted articles, materials and supplies.

Subpart 825.2—Buy American Act—Construction Materials

825.202 Policy.
825.202-70 Nonavailability in the United States.
825.203 Evaluating offers.

Subpart 825.3—Balance of Payments Program

825.302 Policy.
825.302-70 Deviations from the Balance of Payments Program.
825.304 Excess and near-excess foreign currencies.
825.304-70 Determination of feasibility to use excess or near-excess foreign currency.

Subpart 825.6—Customs and Duties

825.603 Procedures.
825.603-70 Technical assistance.

Subpart 825.7—Restrictions on Certain Foreign Purchases

825.701 Policy.
825.703 Exceptions.

Subpart 825.8—International Agreements and Coordination

825.870 Technical assistance.

Subpart 825.9—Omission of the Examination of Records Clause

825.902 Policy.
825.904 Determination and findings.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12611, Mar. 29, 1984, unless otherwise noted.

Subpart 825.1—Buy American Act—Supplies

825.102 Policy.

825.102-70 Nonavailability in the United States.

(a) If articles, materials, and supplies required for a particular procurement are not excepted in FAR 25.108, or when only foreign bids or offers are received, the determination concerning nonavailability required by FAR 25.108(b) will be prepared by the contracting officer for foreign construction materials costing less than $1 million. Each determination will be factually supported in writing and included in the contract file.

(b) Nonavailability determinations for foreign materials costing over $1 million must be requested by field facility contracting officers from the Deputy Assistant Secretary for Acquisition and Materiel Management (93). Each request for a determination must be fully justified with all pertinent facts.

(c) A copy of all determinations made in accordance with paragraph (a) of this section shall be forwarded to the Deputy Assistant Secretary for Acquisition and Materiel Management (93) concurrently with the submissions required by FAR 25.108 (b) and (c).

[49 FR 12611, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 54 FR 40064, Sept. 29, 1989]

825.105 Evaluating offers.

When a determination is required under FAR 25.105, the contracting officer will submit the proposed award to the Deputy Assistant Secretary for Acquisition and Materiel Management (93) for approval by the Secretary. The submission will contain all the facts, including a comparison of all the bids or offers received, and any other pertinent information upon which a determination may be made. If approved, a report of the transaction will be prepared and submitted by the Deputy Assistant Secretary for Acquisition and Materiel Management in accordance with Executive Order 10582, dated December 17, 1954, as amended.

825.108 Excepted articles, materials and supplies.

The following items are added to the list of exceptions contained in FAR 25.108(d):

Glass, Wire
Glass, Lead
Insulin, Human.

[52 FR 32012, Aug. 25, 1987]

Subpart 825.2—Buy American Act—Construction Materials

825.202 Policy.

825.202-70 Nonavailability in the United States.

(a) If articles, materials, and supplies required for a particular procurement are not excepted in FAR 25.108, or when only foreign bids or offers are received, the determination concerning nonavailability required by FAR 25.202(a)(3) will be made by the contracting officer for foreign construction material costing $100,000 or less. Each determination will be factually supported in writing and included in the contract file.

(b) Field facility contracting officers must request approval of nonavailability determinations from the Deputy Assistant Secretary for Acquisition and Materiel Management (93).

(c) A copy of all determinations made in accordance with paragraph (a) of this section shall be forwarded to the Deputy Assistant Secretary for Facilities (08) through the Deputy Assistant Secretary for Acquisition and Materiel Management (93).

(d) Each solicitation will include the clause specified in 852.236-89. This provision reflects the general policy of not authorizing nondomestic materials on VA construction contracts.

[49 FR 12611, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 52 FR 32012, Aug. 25, 1987; 54 FR 40064, Sept. 29, 1989]

825.203 Evaluating offers.

When a contracting officer believes that the requirement of the "Buy American Act" is impracticable as provided in FAR 25.202(a)(2), or that it would be advantageous to VA to deviate from the provisions of the Act as authorized by FAR 25.203, authority to consummate the contract will be requested. The request containing all the facts, including a comparison of all the bids or offers received and any other pertinent information upon which a determination may be made, will be submitted through the Deputy Assistant Secretary for Acquisition and Materiel Management (93), for approval by the Secretary. If approved, a report of the transaction will be prepared and transmitted by the Deputy Assistant Secretary for Facilities in accordance with Executive Order 10582, dated December 17, 1954, as amended.

[49 FR 12611, Mar. 29, 1984, as amended at 52 FR 32012, Aug. 25, 1987; 54 FR 40064, Sept. 29, 1989]

Subpart 825.3—Balance of Payments Program

825.302 Policy.

825.302-70 Deviations from the Balance of Payments Program.

When a contracting officer believes that the requirement of the "Balance of Payments Program" is not practicable as set forth in FAR 25.302 (b)(2) or (b)(3), he/she will request authority to consummate the contract through the Deputy Assistant Secretary for Acquisition and Materiel Management (93) for approval. Each request must be fully justified, containing all pertinent facts.

825.304 Excess and near-excess foreign currencies.

825.304-70 Determination of feasibility to use excess or near-excess foreign currency.

In accordance with FAR 25.304(c), contracting officers will submit requests for determination to utilize excess or near-excess foreign currencies to the Deputy Assistant Secretary for Acquisition and Materiel Management (93).

Subpart 825.6—Customs and Duties

825.603 Procedures.

825.603-70 Technical assistance.

Should the regulations contained in FAR 25.6 be inadequate to meet particular needs of a contracting officer in clearing items through customs and/or obtaining Duty Free Entry of goods, the nearest Regional Office of the United States Customs Service should be contacted for technical assistance. These offices are located as follows:

Regional Commissioner, U.S. Customs Service, 100 Summer St., Boston, Massachusetts 02110

Regional Commissioner, U.S. Customs Service, 99 S.E. 5th St., Miami, Florida 33131

Regional Commissioner, U.S. Customs Service, 585 Felipe St., Houston, Texas 77057

Regional Commissioner, U.S. Customs Service, 6 World Trade Center, New York, New York 10048

Regional Commissioner, U.S. Customs Service, 423 Canal St., New Orleans, Louisiana 70130

Regional Commissioner, U.S. Customs Service, 300 N. Los Angeles St., Los Angeles, California 90053

Regional Commissioner, U.S. Customs Service, 55 E. Monroe St., Chicago, Illinois 60603

Subpart 825.7—Restrictions on Certain Foreign Purchases

825.701 Policy.

825.703 Exceptions.

When felt to be in the best interest of the Government, the contracting officer may request exceptions to the requirements of FAR 25.7 for purchases in excess of $10,000 from the Secretary through the Deputy Assistant Secretary for Acquisition and Materiel Management (93). Each such request must be fully justified, containing all pertinent facts.

Subpart 825.8—International Agreements and Coordination

825.870 Technical assistance

Contracting officers may obtain technical information or guidance on international agreements and treaties for procurements outside the United States by contacting the Director, VA Marketing Center.

Subpart 825.9—Omission of the Examination of Records Clause

825.902 Policy.

If the contracting officer determines that the "Examination of Records Clause" should be omitted after all reasonable efforts to include the clause have failed, and providing that omission of the clause is authorized in the instances cited in FAR 25.903, he/she may request, with appropriate documentation, a determination from the Secretary, through the Deputy Assistant Secretary for Acquisition and Materiel Management (93). The Secretary, should he/she concur in the contracting officer's determination that the clause should be omitted, will then forward an agency request for omission of the clause to the Comptroller General for a final determination as required by FAR 25-903(a)(1), or submit the report required by FAR 25.903(b).

[49 FR 12611, Mar. 29, 1984, as amended at 54 FR 40064, Sept. 29, 1989]

825.904 Determination and findings.

All determinations to omit the "Examination of Records Clause" will be supported by a determination and findings prepared by the contracting officer containing the information set forth in FAR 25.904. The completed determinations and findings will be made a part of the contract file. One copy of the determinations and findings will be forwarded to the Deputy Assistant Secretary for Acquisition and Materiel Management (93).

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 828—BONDS AND INSURANCE

Subpart 828.1—Bonds

Sec.
828.101 Bid guarantees.
828.101-3 Contract clause.
828.101-70 Safekeeping and return of bid guarantee.
828.106-6 Furnishing information.

Subpart 828.3—Insurance

828.306 Insurance under fixed-price contracts.
828.307-1 Group insurance plans.

Subpart 828.70—Performance and Payment Bonds

828.7000 Bond premium adjustment.

Subpart 828.71—Indemnification of Contractors, Medical Research or Development Contracts

828.7100 Scope of subpart.
828.7101 General.
828.7102 Extent of indemnification.
828.7103 Financial protection.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12612, Mar. 29, 1984, unless otherwise noted.

Subpart 828.1—Bonds

828.101 Bid guarantees.

828.101-3 Contract clause.

Where a bid bond is required for supplies or services, the phrase "any cost of acquiring the work" in paragraph (e) of the BID GUARANTEE clause in FAR 52.228-1 may be modified to refer to the cost of "supplies," "services," etc.

828.101-70 Safekeeping and return of bid guarantee.

(a) Certified checks or other negotiable security furnished as bid security with the three lowest acceptable bids will be retained in a safe. These will be returned by certified mail or in person upon presentation of proper receipt after contract and bonds have been signed and approved.

(b) Certified checks or other negotiable security furnished in support of other than the three lowest acceptable bids should be returned promptly to the respective bidders by certified mail, or in person upon presentation of proper receipt.

(c) Commercial bid bonds are not returned unless specifically requested by the bidders, and, even if requested by any of the three low bidders, are not returned until contract and bonds have been executed by the successful bidder, or all bids have been rejected.

828.106-6 Furnishing information.

The head of the contracting activity as defined in 802.100 shall be the agency designee referenced in FAR 28.106-6(c) to furnish copies of payment bonds to requestors except for contracts awarded by the Office of Facilities. For those contracts, Office of Facilities contracting officers shall be the Department designee.

[54 FR 30045, July 18, 1989]

Subpart 828.3—Insurance

828.306 Insurance under fixed-price contracts.

(a) Term contracts, or contracts of a continuing nature, for ambulance, automobile and aircraft service, will contain the provision in 852.237-71.

(b) *Exceptions.* The provisions of this 828.306 do not apply to emergency or sporadic ambulance service authorized by VA Manual MP-1, part II, chapter 3, or other emergency or sporadic vehicle or aircraft services. *Provided,* That such service is not used solely for the purpose of avoiding entering into a continuing contract. *Provided further,* That such services will be obtained from firms known to carry insurance coverage in accordance with State or local requirements.

828.307-1 Group insurance plans.

Under cost reimbursements contracts, before buying insurance under a group insurance plan, the contractor shall submit the plan to the contracting officer for review. During review, the contracting officer should utilize all sources of information available such as audit, industry practices, etc., to determine that acceptance of the group insurance plan, as submitted, is in the Government's best interest, prior to submitting the determination and the plan to the head of the contracting activity for approval.

[54 FR 24173, June 6, 1989]

Subpart 828.70—Performance and Payment Bonds

828.7000 Bond premium adjustment.

When performance and payment bonds are required, the contract will contain the clause prescribed in 852.228-70.

Subpart 828.71—Indemnification of Contractors, Medical Research or Development Contracts

828.7100 Scope of subpart.

(a) This subpart sets forth the policies and procedures concerning indemnification of contractors performing contracts which involve a risk of an unusually hazardous nature, covering medical research or development as authorized by 38 U.S.C. 4101.

(b) The authority to indemnify the contractor under this subpart does not create any rights to third parties which would not otherwise exist by law.

(c) As used in this subpart the term "contractor" includes subcontractors of any tier under a contract containing an indemnification provision pursuant to 38 U.S.C. 4101(c)(3)(A).

828.7101 General.

(a) The approval for the indemnification of contractors will be made by the Secretary of Veterans Affairs.

(b) Contracting Officers shall submit requests for approval, together with all available information, to the Deputy Assistant Secretary for Acquisition and Materiel Management (93) for transmittal to the Secretary.

[49 FR 12612, Mar. 29, 1984, as amended at 54 FR 24173, June 6, 1989; 54 FR 30044, July 18, 1989]

828.7102 Extent of indemnification.

(a) Any contract for medical research or development authorized by 38 U.S.C. 4101, the performance of which involves a risk of an unusually hazardous nature, may provide that the Government will indemnify the contractor against either or both of the following, but only to the extent that they arise out of the direct performance of the contract and to the extent not covered by the financial protection required under 828.7103.

(1) Liability (including reasonable expenses of litigation or settlement) to third persons, except liability under State or Federal Workmen's Compensation Acts to employees of the contractor employed at the site of and in connection with the contract for which indemnification is granted, for death, bodily injury, or loss of or damage to property, from a risk that the contract defines as unusually hazardous.

(2) Loss of or damage to property of the contractor from a risk that the contract defines as unusually hazardous.

(b) A contract that provides for indemnification in accordance with this subpart will also provide for:

(1) Notice to the contracting officer of any claim or suit against the contractor for death, bodily injury, or loss of or damage to property; and

(2) Control of or assistance in the defense by the Government, at its election, of such suit or claim for which indemnification is provided in the contract.

828.7103 Financial protection.

(a) The financial protection to cover liability to third persons and loss of or damage to the contractor's property which the contractor is required to have and maintain shall be the maximum amount of insurance available from private sources; however, the Secretary may establish a lesser amount after taking into consideration the cost and terms of private insurance.

(b) The financial protection may include private insurance, private contractual indemnities, self-insurance, other proof of financial responsibility, or a combination of such forms to provide the maximum amount required. When the contractor elects to utilize self insurance, proof of such financial responsibility up to the maximum amount required will be furnished the contracting officer prior to award.

PART 829—TAXES

Sec.
829.000 Scope of part.

Subpart 829.1—General

829.101 Resolving tax problems.

Subpart 829.2—Federal Excise Taxes

829.202 General exemptions.
829.202-70 Tax exemptions for alcohol products.
829.270 Tax exempt tobacco products for State institutions.
829.270-1 Institution responsibilities and procedures.
829.270-2 Processing of order by the Department of Veterans Affairs.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12614, Mar. 29, 1984, unless otherwise noted.

829.000 Scope of part.

This part prescribes policies and procedures for exemptions from Federal excise taxes imposed on tobacco and alcohol products for such items purchased for use in the Department of Veterans Affairs medical care program and specifies refund procedures for State and local taxes.

Subpart 829.1—General

829.101 Resolving tax problems.

Contracting officers will submit requests for legal advice through channels to the General Counsel.

Subpart 829.2—Federal Excise Taxes

829.202 General exemptions.

829.202-70 Tax exemptions for alcohol products.

(a) *General.* (1) The procurement of spirits free of tax for nonbeverage purposes is permitted to Government agencies by regulations of the Bureau of Alcohol, Tobacco, and Firearms (ATF) (see 27 CFR 211.231-237, 213.141-146 and 240.720-722). The use of tax-free alcohol, whiskey, beer, wine and denatured spirits for nonbeverage purposes shall include but not be limited to medicinal and scientific purposes and in the treatment of patients.

(2) Authority is hereby delegated to the Director, Marketing Center, Hines, Illinois, and to the Chief, Acquisition and Materiel Management Service, Department of Veterans Affairs medical facilities to sign application permits on Bureau of Alcohol, Tobacco, and Firearms (ATF) prescribed forms. This authority is not to be redelegated.

(b) *Whiskey, alcohol, and denatured alcohol.* (1) Application forms for tax-free purchases are to be obtained from and submitted to the Director, Bureau of Alcohol, Tobacco, and Firearms, Washington, DC 20226.

(2) ATF Form 1486, Specially Denatured Spirits for Use of United States, is the application/permit required for denatured spirits, and ATF Form 1444, Tax-Free Spirits for Use of United States, is required for distilled spirits (whiskey and alcohol). These are continuing permits to procure items tax free. Copies must be made available to the supplier in support of each procurement.

(3) Purchases for excise tax-free whiskey and alcohol, not available through the depot can only be made from a distillery or a bonded premises. In accordance with 27 CFR 213.144, the vendor will also support each shipment with ATF 1473, Shipment and Receipt Specifically Denatured Tax-Free, or Recovered Spirits. The ATF 1473 will be completed by the accountable officer and the original copy will be forwarded to the Regional Regulatory Administrator whose address is shown in item 12 of the form. A copy of ATF 1473 will be retained in the purchase order file.

(c) *Wine.* No tax exemption form or ATF permit is required for the tax-free procurement of wine. An extra copy of a properly executed purchase order or requisition document may be furnished to the supplier (retailer, wholesaler or winery) to facilitate record keeping.

(d) *Beer.* Tax-free beer may be procured only from licensed breweries and only when such product is prescribed for therapeutic use of patients. The application for an ATF permit is to be submitted in letter form to the Director, Bureau of Alcohol, Tobacco, and Firearms, Washington, D.C. 20226. The following information is required.

(1) Name and address of facility;

(2) Specific purpose for which beer will be used;

(3) Quantity proposed to buy each month, year, etc.;

(4) Name and address of brewery; and

(5) Copy of document authorizing contracting officer to sign request.

A new permit is needed only when beer is to be purchased from a different brewery than the one for which the original permit was requested.

[49 FR 12614, Mar. 29, 1984, as amended at 54 FR 24173, June 6, 1989]

829.270 Tax exempt tobacco products for State institutions.

(a) Bureau of Alcohol, Tobacco, and Firearms regulations permit the withdrawal of tax-free tobacco products by facilities and institutions owned or controlled by State Governments, territories, and the District of Columbia for gratuitous distribution to present and former members of the Armed Forces of the United States who are patients in such institutions (27 CFR 295.31-37). These arrangements will be effective only with institutions where the official-in-charge abides by the procedures and controls prescribed by the Department of Veterans Affairs. The unauthorized or illegal use of these products may result in the withdrawal of this privilege by the Department of Veterans Affairs.

(b) No tax exemption form or certificate is required for the tax-free purchase of tobacco products. An extra copy of the purchase order will be provided the manufacturer to facilitate record keeping required by the Bureau of Alcohol, Tobacco, and Firearms.

829.270-1 Institution responsibilities and procedures.

(a) The official-in-charge of the institution will act as a representative of the Department of Veterans Affairs in the purchase, storage, and distribution of these products and in ensuring the product is distributed on a gratuitous and equitable basis to all eligible recipients. Under no circumstances will these items be offered for sale.

(b) The Department of Veterans Affairs will neither accept nor handle donations or funds for institutions.

(c) Payment or nonpayment of State taxes on tobacco products is a matter between the concerned State and the ordering institution.

(d) Orders will be on the institution's regular order form made out to the manufacturer of the desired product. The original and two copies of the order, each signed, will be forwarded to the nearest Department of Veterans Affairs medical center. Orders shall also be issued to cover receipt of unsolicited shipments of these products intended for use of veteran-patients. All copies of these orders will be marked CONFIRMATION—DO NOT RESHIP. All orders shall bear a certificate as follows:

> Tobacco products for free distribution to present and former members of the Armed Forces of the United States who are hospitalized or domiciled in this institution.

(e) Copies of all orders and other pertinent documents will be retained and be available to the Department of Veterans Affairs and the Bureau of Alcohol, Tobacco, and Firearms for inspection purposes.

829.270-2 Processing of order by the Department of Veterans Affairs.

(a) Full cooperation will be given institution representatives in implementing these procedures.

(b) The facility director or designee will approve the institution order by signing the original and one copy in ink over his/her printed name and title. The approved orginal and copy shall be forwarded to the vendor as noted in 829.270. The additional copy shall be retained in the medical center's files.

[49 FR 12614, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 54 FR 40064, Sept. 29, 1989]

PART 831—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 831.70—Contract Cost Principles and Procedures

Sec.

831.7000 Scope of subpart.

831.7001 Allowable costs under cost reimbursement vocational rehabilitation and education contracts or agreements.

831.7001-1 Tuition.

831.7001-2 Special services or courses.

831.7001-3 Books, supplies and equipment required to be personally owned.

831.7001-4 Medical services and hospital care.

831.7001-5 Secretary's Decision No. 557.

831.7001-6 Consumable instructional supplies.

831.7001-7 Reimbursement for other supplies and services.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12615, Mar. 29, 1984, unless otherwise noted.

Subpart 831.70—Contract Cost Principles and Procedures

831.7000 Scope of subpart.

This subpart contains general cost principles and procedures for the determination and allowance of costs in connection with the negotiation and administration of cost reimbursement type contracts pertaining to the furnishing of vocational rehabilitation, education, and training to eligible veterans under chapter 31 of Title 38, United States Code.

831.7001 Allowable costs under cost reimbursement vocational rehabilitation and education contracts or agreements.

831.7001-1 Tuition.

(a) Except as provided in this section, when the contractor has a customary cost of tuition the charge to the Department of Veterans Affairs may not exceed that charged to similarly circumstanced nonveteran students; provided that where the contractor has more than one standard charge for the same service, the charge to the Department of Veterans Affairs will be the lowest price for the entire course, semester, quarter, or term which is offered or published.

(b) VA will not normally pay tuition or incidental fees to institutions or establishments furnishing apprentice or other training on-the-job. VA may pay:

(1) For such charges customarily made by nonprofit workshop or similar establishment for providing work adjustment training to similarly circumstanced nonveterans even though an incentive wage is paid the trainee as part of the training; or

(2) For certain training expenses incurred by an employer providing on-the-job training following rehabilitation to the point of employability when such additional training is determined to be necessary by VA.

(c) When the total cost of instruction is paid from Federal funds or a portion of the cost is covered by grants from the Federal Government, i.e., Smith-Hughes or other laws, excluding Federal Land Grant Funds, such subsidy will be taken into consideration in determining the charge to the Department of Veterans Affairs. The term, Federal Land Grant Funds, refers to those received under the Morrill-Nelson Act (Morrill Acts of 1862 and 1890 and the Nelson amendment of 1907) and section 22 of the Bankhead-Jones Act of 1935.

(d) Payments on behalf of a veteran who receives a fellowship, scholarship, grant-in-aid, assistantship, or similar award in complete or partial payment of tuition or fees or both will be made in accordance with the following:

(1) The award will reduce, to the extent of the award, the amount of tuition or fee or both that is payable by the Department of Veterans Affairs.

(2) Awards which are not paid in cash, except those which are made specifically for the purpose of defraying the cost of room and board in dormitories which will be disregarded, will reduce to the extent of the award the charges for which the Department of Veterans Affairs is responsible.

(3) Cash awards may be retained by the veterans and will not be deducted from charges ordinarily paid by the Department of Veterans Affairs.

(4) Waivers of tuition and fees provided under law by States or other Government authority will be utilized to reduce the charges payable by Department of Veterans Affairs in accordance with such waivers.

(e) Enrollment fees in an amount sufficient to cover the cost of registration may be paid, provided the institution or training establishment usually makes such a charge, and it does not exceed that charge made to other students or trainees.

[49 FR 12615, Mar. 29, 1984, as amended at 54 FR 40064, Sept. 29, 1989]

831.7001-2 Special services or courses.

Special services or courses are those services requested by the Department of Veterans Affairs which are over and above those customarily required by the institution for similarly circumstanced nonveterans and are considered by the contracting officer to be necessary for the rehabilitation of the trainee. The costs of such special services or courses will be negotiated prior to being requested by the Department of Veterans Affairs.

831.7001-3 Books, supplies and equipment required to be personally owned.

(a) Reimbursement for books, supplies, or equipment and referred to as supplies, will be made as provided in this section.

(1) Reimbursement will be made for those supplies customarily required to be owned personally by all students taking the same course or courses except that reimbursement may be made for items which are not specifically required by the school for pursuit of the course, but are determined to be needed by VA because of the demands of the course, general possession by other students, and the disadvantage imposed on the veterans by not having the item. In no instance will the supplies be in a greater variety, quality, or amount than required of nonveteran students. In this instance required is in contradistinction to requested or desirable to have or necessary for a future profession or job but not required by the institution of all students in the course.

(2) When supplies are available in several prices, grades, or qualities, reimbursement may be made only for such quality or grade that will meet the requirements.

(3) Partial payment agreements in which the Department of Veterans Affairs shares payment with the veterans is not allowable.

(4) The costs incurred by the institution in connection with the veteran's thesis such as typing, printing, microfilming, or otherwise reproducing the required number of copies; research expenses when certified by the veterans committee chairman, major professor, department head, or appropriate dean that such expenses are required in order to complete the course requiring the preparation of a thesis are considered as supplies and are authorized for reimbursement.

(5) When the institution operates a bookstore or supply store for all students the reimbursement for supplies issued to trainees will be no greater than charges made to nonveteran students.

(6) Where the institution, training establishment, or employer arranges for issuance of supplies to all students by stores or establishments not institutionally owned and to pay such store or establishment for supplies issued to trainees, reimbursement is allowable provided the charges are no greater than those paid by nonveterans or to the institutions whichever is the lesser.

(7) Supplies purchased by the institution specifically for trainees will be reimbursed at the net cost to the institution.

(8) Where the institution does not provide or arrange for issuance of generally required books, tools and supplies for students attending the facility, the institution, in cooperation with VA, may designate certain stores and establishments to provide generally required books, tools and supplies for veterans pursuing a vocational rehabilitation program. The vendor will be reimbursed in the same manner as for supplies provided or arranged for by the institutions.

(9) Where it is customary in a survey subject to permit each student to obtain the aggregate of books for the subject on a rental basis (commonly referred to as a rental set) and the

ownership or permanent possession by the student is not required, reimbursement is authorized for the rental charge provided it does not exceed the charge made to nonveteran students.

(10) Educational and training institutions furnishing supplies to trainees which are required to be owned personally or on a rental basis by all students pursuing the same or similar course may be compensated for such services in an amount not exceeding 10 percent of the allowable charge for the supplies furnished or rented except:

(i) Where the tuition covers the charges for supplies or rentals or a stipulated fee is assessed all students, handling charges are not allowable.

(ii) The handling charge is not allowable for Government-owned books procured by the institution from the Library of Congress.

(iii) In cases where an item of equipment will exceed $50 in cost, effort will be made to secure a lower handling charge than for those costing a lesser amount. The agreed percent for such handling charges will be included in the contract or added as an addendum.

[49 FR 12615, Mar. 29, 1984, as amended at 54 FR 40064, Sept. 29, 1989]

831.7001-4 Medical services and hospital care.

(a) The VA may pay the customary student health fee when payment of the fee is required for similarly circumstanced nonveterans. If payment of the fee is not required for similarly circumstanced nonveterans payment, payment may be made if it is determined by the Veterans Health Services and Research Administration that such payment is in the best interest of the veteran and the government.

(b) Where medical services or hospital care not covered by the customary students health fee are available in the school operated facilities or arrangements have been made by the institution with doctors and hospitals in the immediate area, reimbursement by the Veterans Benefits Administration for such services may be made in a contract for such services provided that the Director, VA Medical Center, determines:

(1) That such arrangements are necessary to provide timely medical care for veterans attending the facility under provisions of Chapter 31; and

(2) The general rates established for such services do not exceed the rates established by the Chief Medical Director.

(c) VA may reimburse a rehabilitation facility for incidental medical services provided during a veteran's program at the facility.

[49 FR 12615, Mar. 29, 1984, as amended at 54 FR 40064, Sept. 29, 1989]

831.7001-5 Secretary's Decision No. 557.

(a) Fees and expenses authorized under Secretary's Decision No. 557 may be authorized for payment when the educational institution or training establishment makes such payments on behalf of the veteran.

(b) Payment for fees and expenses not made by the educational institution or training establishment will be made in accordance with Part 813 of this chapter or FAR 15-210(a)(1).

831.7001-6 Consumable instructional supplies.

(a) Reimbursement for consumable instructional supplies which institutions require for the instruction of all students, veteran or nonveteran pursuing the same or comparable course or courses will be made when:

(1) The supplies are entirely consumed in the fabrication of a required project.

(2) The supplies are not consumed but are of such a nature that they cannot be salvaged from the end product for reuse for further instructions by disassembling or dismantling the end product.

(b) Reimbursement for consumable instructional supplies is not allowable when:

(1) The supplies can be salvaged for reuse.

(2) The supplies used in a project which has been elected by the student as an alternate class project in order to produce an end product of greater value than that which is normally required to learn the skills of the occupation and which will become his property upon completion.

(3) The supplies used in a project which has been selected by the institution to provide the student with a more elaborate end product than is required to provide adequate instruction as an inducement to the veteran to elect a particular course of study.

(4) The salable value of the end product is equal to or greater than the cost of the supplies used in its fabrication or assembly and a reasonable use has not been made of such supplies so that they are not readily salvaged from the end product to be reused for instructional purposes.

(5) The end product is of permanent value and retained by the institution.

(6) A third party provides the articles or equipment for repair or improvement and for which he or she would otherwise pay a commercial price.

(7) The number of projects resulting in end products in excess of the numbers normally required to teach the recognized job operations and processes of the occupation stipulated in the approved course of study.

(8) The cost of supplies are included in the charge for tuition or as a fee designated for such purpose.

[49 FR 12615, Mar. 29, 1984, as amended at 54 FR 40064, Sept. 29, 1989]

831.7001-7 Reimbursement for other supplies and services.

Reimbursement shall be made for other services and assistance which may be authorized under provisions of applicable Chapter 31 regulations including but not limited to employment and self-employment, initial and extended evaluation, and independent living services.

[49 FR 12615, Mar. 29, 1984, as amended at 54 FR 40064, Sept. 29, 1989]

PART 832—CONTRACT FINANCING

Subpart 832.4—Advance Payments

Sec.
832.402 General.
832.404 Exclusions.

Subpart 832.5—Progress Payments Based on Costs

832.502 Preaward matters.
Sec.
832.502-2 Contract finance office clearance.

Subpart 832.8—Assignment of Claims

832.805 Procedure.
832.805-70 Distribution/notification of assignment of claims.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12616, Mar. 29, 1984, unless otherwise noted.

Subpart 832.4—Advance Payments

832.402 General.

The determination required by FAR 32.402(c)(1)(iii) will be made by the Deputy Assistant Secretary for Acquisition and Materiel Management. Prior to award, contracting officers will submit, through channels, the information required by FAR 32.409-1 for such determinations.

832.404 Exclusions.

(a) Under the provisions of 31 U.S.C. 3324(d)(2), as amended, advance payment is authorized for subscriptions or other charges for newspapers, magazines, periodicals and other publications for official use of any office under the Government from appropriations available therefore, notwithstanding the provisions of 31 U.S.C. 3324(a). The term "other publications" includes any publication printed, microfilmed, photocopied or magnetically or otherwise recorded for auditory or visual usage.

(b) Under the provisions of 31 U.S.C. 1535, advance payment may be made for services and supplies obtained from another Government agency. This includes items such as coupons from the Government Printing Office and Operator Permits, Civilian Defense Radio System, and from the Federal Communications Commission.

(c) Under the provisions of 5 U.S.C. 4109, advance payment may be made for all or any part of the necessary expenses for training Government employees in Government or non-Government facilities. This includes the purchase or rental of books, materials and supplies or services directly related to the training of a Government employee.

Subpart 832.5—Progress Payments Based on Costs

832.502 Preaward matters.

832.502-2 Contract finance office clearance.

Prior approval of actions listed in FAR 32.502-2 will be obtained from the Deputy Assistant Secretary for Acquisition and Materiel Management (93). Requests for approval shall be accompanied by full justification together with the recommendations of the contracting officer.

Subpart 832.8—Assignment of Claims

832.805 Procedure.

832.805-70 Distribution/notification of assignment of claims.

(a) The Contracting officer will file the retained copy of the notice of assignment and the certified copy of the original instrument of assignment with the General Accounting Office copy of the contract.

(b) Contracting officers will notify field facilities of any recognized assignment of payments under contracts executed in Central Office or by the Marketing Divisions in all cases where payment for articles and services under such contracts are certified and approved for payment in the field.

[49 FR 12616, Mar. 29, 1984, as amended at 54 FR 40065, Sept. 29, 1989]

PART 833—PROTESTS, DISPUTES, APPEALS

Sec.

Subpart 833.1—Protests

833.102 General.
833.103 Protests to the Department.
833.104 Protests to GAO.
833.105 Protests to the GSBCA.
833.106 Solicitation provision.

Subpart 833.2—Disputes and Appeals

833.209 Suspected fraudulent claims.
833.211 Contracting officer's decision.

Sec.

833.212 Contracting officer's duties upon appeal.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

SOURCE: 51 FR 23070, June 25, 1986 (interim rule), and 52 FR 28559, July 31, 1987 (final rule), unless otherwise noted.

EDITORIAL NOTE: For nomenclature changes affecting Part 833, see 52 FR 28559, July 31, 1987.

Subpart 833.1—Protests

833.102 General.

Solicitations shall instruct interested parties (see 852.233-2) to deliver a copy of any protest filed with the General Accounting Office (GAO) or the GSA Board of Contract Appeals (GSBCA) to the contracting officer and the appropriate Central Office activity as follows:

(a) For contracts to be awarded by the Office of Facilities: Deputy Assistant Secretary for Facilities (08), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

(b) For all other contracts: Deputy Assistant Secretary for Acquisition and Materiel Management (93B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

[51 FR 23070, June 25, 1986, and 52 FR 28559, July 31, 1987, as amended at 52 FR 28559, July 31, 1987; 54 FR 40065, Sept. 29, 1989]

833.103 Protests to the Department.

(a) *Timeliness of protest.* (1) Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed in writing with the contracting officer prior to bid opening or the closing date for receipt of initial proposals. In negotiated procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation must be protested not later than the next closing date for receipt of proposals following the incorporation.

(2) In cases other than those covered in paragraph (a)(1) of this section, protests shall be filed with the contracting officer no later than 10 workdays after the basis for the protest is known or should have been known, whichever is earlier.

(b) *Filing of protests.* (1) All solicitations, except those issued by the Office of Facilities, will instruct interested parties to deliver a copy of any GAO or GSBCA protest to the contracting officer and the Deputy Assistant Secretary for Acquisition and Materiel Management (93D), VA Central Office, 810 Vermont Avenue NW., Washington, DC 20420, by adding this requirement to its service of protest provision, FAR 52.233-2.

(2) An interested party may protest to the contracting officer, the Deputy Assistant Secretary for Acquisition and Materiel Management (93B), or the Deputy Assistant Secretary for Facilities (08), as appropriate.

(3) Protests must be in writing and addressed as follows:

(i) Contracting officer protests—address where offer/bid is to be submitted;

(ii) Deputy Assistant Secretary for Acquisition and Materiel Management (93B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or

(iii) Deputy Assistant Secretary for Facilities (08), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

(4) A protest filed with any of the individuals identified in paragraph (b)(2) of this section will:

(i) Include the name, address and telephone number of the protester;

(ii) Identify the solicitation and/or contract number;

(iii) Set forth a detailed statement of the legal and factual grounds of the protest including copies of relevant documents;

(iv) Specifically request a ruling by the individual upon whom the protest is served; and

(v) State the form of relief requested.

(5) The protester shall furnish a copy of the protest, including relevant documents not issued by the contracting agency, to the individual or location designated by the contracting agency in the solicitation for receipt of protests. If there is no designation in the solicitation, the protester shall furnish a copy of the protest to the contracting officer.

(6) No formal briefs or other technical forms of pleading or motion are required. Protest submissions should be concise, logically arranged and clearly state legally sufficient grounds of protest. An agency protest, however, may be dismissed for failure to comply with any of the requirements of this section.

(7) Protests regarding certain issues may be dismissed by VA without consideration of the merits or forwarded to another agency for appropriate action. Among these protests are the following:

(i) *Contract administration.* The administration of an existing contract is within the discretion of the contracting agency. Disputes between a contractor and the Department are resolved pursuant to the disputes clause of the contract and the Contract Disputes Act of 1978. 41 U.S.C. 601-613.

(ii) *Small business size standards and standard industrial classification.* Challenges of established size standards or the size status of particular firms, and challenges of the selected standard industrial classification are for review solely by the Small Business Administration. 15 U.S.C. 637(b)(6); 13 CFR 121.3-6 (1984).

(iii) *Small business certificate of competency program.* Any referral made to the Small Business Administration pursuant to section 8(b)(7) of the Small Business Act, or any issuance of a certificate of competency or refusal to issue a certificate under such section is not reviewed in accordance with bid protest procedures absent a showing of possible fraud or bad faith on the part of Government officials.

(iv) *Protests under section 8(a) of the Small Business Act.* Since contracts are let under section 8(a) of the Small Business Act to the Small Business Administration at the contracting officer's discretion and on such terms as agreed upon by the procuring agency and the Small Business Administration, the decision to place or not to place a procurement under the 8(a) subcontract are not subject to review absent a showing of possible fraud or bad faith on the part of Government officials or that regulations may have been violated. 15 U.S.C. 637(a).

(v) *Affirmative determination of responsibility by the Contracting Officer.* Because a determination that a bidder or offeror is capable of performing a contract is based in large measure on subjective judgments which generally are not readily susceptible to reasoned review, an affirmative determination of responsibility will not be reviewed, absent a showing that such determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met.

(vi) *Procurement protested to the General Services Administration Board of Contract Appeals.* Interested parties may protest a procurement or proposed procurement of automated data processing equipment and services to the General Services Administration Board of Contract Appeals. After a particular procurement or proposed procurement is protested to the Board, the procurement may not, while the protest is before the Board, be the subject of a protest to the contracting agency. An interested party who has filed a protest with the Board may not protest the same matter to the contracting agency. 40 U.S.C. 759(h), as amended by section 2713 of the Competition in Contracting Act of 1984, Pub. L. 98-369.

(vii) *Protests not filed with the contracting agency within the time limits set forth in 833.103(a).*

(viii) *Walsh-Healey Public Contract Act.* Challenges of the legal status of a firm as a regular dealer or manufacturer within the meaning of the Walsh-Healey Act is for determination solely by the procuring agency, the Small Business administration (if a small business is involved) and the Secretary of Labor. 41 U.S.C. 35-45.

(ix) *Subcontractor protests.* The contracting agency will not consider subcontractor protests except where the subcontract is by or for the Government.

(x) *Judicial proceedings.* The contracting agency will not consider protests where the matter involved is the subject of litigation before a court of competent jurisdiction.

(c) *Answering protests.* (1) On protests filed with the contracting officer, the contracting officer may make the determination identified in FAR 33.103(a). On protests filed with the Deputy Assistant Secretary for Acquisition and Materiel Management (93B), or the Deputy Assistant Secretary for Facilities (08), those individuals are authorized to make the determination identified in FAR 33.103(a). These determinations made under (a) and (b) of this section will be in writing and will be made part of the contract file.

(2) The individuals identified in paragraph (c)(1) of this section will respond to any protests within 25 workdays after receipt of the protest. Preaward protests must be answered prior to contract award. Any delays in answering the protest will be communicated to all interested parties.

(d) *Letter to protester.* When a protest has been lodged with the contracting officer and has been subsequently denied by the contracting officer, the letter to the protester along with copies to interested parties detailing the contracting officer's reasons for denying the protest will conclude with the following statement, naming the appropriate VA officials:

> Should you disagree with this decision, you may file an appeal with [1] ______. Any such appeal must be received within 10 working days after receipt of this letter. In the alternative, you may file an appeal with the General Accounting Office (GAO) at the following address: General Counsel, General Accounting Office, Washington, DC 20548, ATTN: Procurement Law Control Group. Any GAO appeal must be filed within 10 workdays of this formal notification of or actual or constructive knowledge of initial adverse agency action (as determined in 4 CFR 21.0(e)). It should be noted that if you file an appeal with the Deputy

---

[1] The Deputy Assistant Secretary for Acquisition and Materiel Management (93B), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or (for contracts awarded by the Office of Facilities), Deputy Assistant Secretary for Facilities (08), 811 Vermont Avenue, NW., Washington, DC 20420.

Assistant Secretary for Acquisition and Materiel Management or the Deputy Assistant Secretary for Facilities, you may waive your right of further appeal to the Comptroller General at a later date.

(e) *Requests for GAO advance decisions.* When a written protest has been lodged with the contracting officer and he/she considers it desirable to do so, he/she may request an advance decision from the Comptroller General. The submission to the Comptroller General will be sent through the Deputy Assistant Secretary for Acquisition and Materiel Management (93B) or the Deputy Assistant Secretary for Facilities, as appropriate, and will include the material indicated in FAR 33.104(a)(2). The contracting officer will notify the protesting individual or firm promptly in writing of the decision of the Comptroller General.

(f) *Protect after award.* When written protect is lodged with the contracting officer, he/she will review the basis for award.

(1) If the contracting officer determines that the award was proper, he/she will furnish the protester a written explanation of the basis for the award which is responsive to the allegations of the protest. The contracting officer will advise the protester that he/she may appeal the determination to the Deputy Assistant Secretary for Acquisition and Materiel Management (93B), or the Deputy Assistant Secretary for Facilities in the case of a Central Office architect-engineer or construction contract, or the Comptroller General as specified in paragraph (d) of this section.

(2) If the contracting officer determines that the award is questionable, he/she will advise the contractor of the protest and invite him/her to submit his/her views and relevant information. At the same time, the contracting officer may seek to obtain a mutual agreement with the contractor to suspend performance on a no-cost basis or issue a stop-work order in accordance with contract clause, FAR 52.233-3, Protest After Award (July 1985). Whether or not the contractor agrees, the case will be submitted promptly to the Deputy Assistant Secretary for Acquisition and Materiel Management (93B), or the Deputy Assistant Secretary for Facilities, in the case of a Central Office architect-engineer or construction contract, who will either advise the contracting officer of the appropriate action to take, or submit the case to the Comptroller General for his/her decision.

[51 FR 23070, June 25, 1986, and 52 FR 28559, July 31, 1987, as amended at 52 FR 28560, July 31, 1987; 52 FR 49017, Dec. 29, 1987; 54 FR 40065, Sept. 29, 1989]

833.104 Protests to GAO.

(a) *General.* (1) When a protest before or after award has been lodged with the General Accounting Office (GAO), the contracting officer will prepare a report to be forwarded to the Deputy Assistant Secretary for Acquisition and Materiel Management (93B), or the Deputy Assistant Secretary for Facilities (08), as appropriate, within 5 workdays after receipt of verbal notice of the protest or receipt of a copy of the protest, whichever occurs first, for preparation of the Department report. The report should include a copy of the documentation indicated in FAR 33.104(a)(2).

(2) Contracting officers are responsible for the notification procedures outlined in FAR 33.104(a)(3).

(b) *Protests before award.* When the Department has received notice from the GAO of a preaward protest filed directly with GAO, award shall not be made until the matter is resolved, unless the Deputy Assistant Secretary for Acquisition and Materiel Management (93B), or the Deputy Assistant Secretary for Facilities (08), as appropriate, approves the head of contracting activity findings required by FAR 33.104(b)(1) and GAO has been notified pursuant to FAR 33.104(b)(2).

(c) *Protests after award.* Protests after award shall be handled in a manner consistent with procedures identified for protests before award. Although persons involved or affected by the filing of a protest may be limited, at least the contractor shall be furnished the notice of the protest and its basis by the contracting officer. When VA receives from GAO, *within ten calendar days after award,* a notice of protest filed directly with GAO, and it is determined by the head of the contracting activity pursuant to FAR 33.104(c)(2) that contract performance should be authorized, the written findings will first be approved by the Deputy Assistant Secretary for Acquisition and Materiel Management (93B) (or the Deputy Assistant Secretary for Facilities, as appropriate), and the GAO must be notified as required by FAR 33.104(c)(3).

[51 FR 23070, June 25, 1986, and 52 FR 28559, July 31, 1987, as amended at 52 FR 28560, July 31, 1987; 54 FR 40065, Sept. 29, 1989]

833.105 Protests to the GSBCA.

(a) Contracting officers are required to forward appropriate documentation to prepare the Department's protest file within 3 workdays after receipt of the notice of protest to the Deputy Assistant Secretary for Acquisition and Materiel Management (93B).

(b) Contracting officers are responsible for the notification procedures outlined in FAR 33.105(a)(2)(i). Confirmation of this notification process will be forwarded to the Deputy Assistant Secretary for Acquisition and Materiel Management (93B), or the Deputy Assistant Secretary for Facilities (08), as appropriate, within three workdays after receipt of the protest in order to comply with FAR 33.105(a)(2)(ii).

[51 FR 23070, June 25, 1986, and 52 FR 28559, July 31, 1987, as amended at 52 FR 28559, July 31, 1987; 54 FR 40065, Sept. 29, 1989]

833.106 Solicitation provision.

The contracting officer shall insert the VAAR provision 852.233-2, Service of Protest (July 1985) (Deviation FAR 52.233-2) and VAAR provision 852.233-70, Protest Content (June 1987) in all solicitations other than small purchases.

[52 FR 28561, July 31, 1987; 52 FR 32013, Aug. 25, 1987]

Subpart 833.2—Disputes and Appeals

833.209 Suspected fraudulent claims.

Matters relating to suspected fraudulent claims will be referred to the Assistant Inspector General, Office of Investigations (51) for investigation and referral to the Department of Justice. No collection, recovery or other settlement action will be initiated while the matter is in the hands of the Department of Justice without first obtaining the concurrence of the U.S. Attorney concerned, through the Inspector General.

833.211 Contracting officer's decision.

(a) When a dispute cannot be settled by agreement and a final decision under the Disputes clause of the contract is necessary, the contracting officer shall furnish the contractor his/her final decision in the matter.

(b) The decision must be identified as a final decision, be in writing, and include a statement of facts in sufficient detail to enable the contractor to fully understand the decision and the basis on which it was made. It will normally be in the form of a statement of the claim or other description of the dispute with necessary references to the pertinent contract provisions. It will set forth those facts relevant to the dispute, with which the contractor and the contracting officer are in agreement, and as clearly as possible, the area of disagreement.

(c) Except as provided in paragraph (d) of this section, the decision shall, in addition to the material required by FAR 33.211(a)(4), contain the following:

> The Department of Veterans Affairs Board of Contract Appeals (VABCA) is the authorized representative of the Secretary for hearing and determining such disputes. The rules of the VABCA are published in section 1.783, of Title 38, Code of Federal Regulations. The address of the Board is 810 Vermont Avenue, NW., Washington, DC 20420.

(d) If the decision involves a contract entered into prior to the effective date of the Contracts Disputes Act of 1978, i.e., March 1, 1979, and the decision is on a claim which was pending before the contracting officer, or initiated thereafter, the decision shall contain the following:

> The Department of Veterans Affairs Contract Appeals Board (VACAB) is the authorized representative for hearing such disputes. The rules of the VACAB are published in § 1.774, of Title 38, Code of Federal Regulations. The address of the Board is

810 Vermont Avenue, NW., Washington, DC 20420.

The appeal must be filed within 30 days of receipt of the final decision. Any request for an extension of the 30-day appeal period will be denied by the contracting officer. In the alternative, the contractor may elect to proceed under the Contract Disputes Act of 1978, 41 U.S.C. 601-613, in which case, you must within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the Board of Contract Appeals and provide a copy to the contracting officer from whose decision the appeal is taken. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number. Instead of appealing to the Board of Contract Appeals, you may bring an action directly in the U.S. Claims Court (except as provided in the Contract Disputes Act of 1978, 41 U.S.C. 603, regarding Maritime Contracts) within 12 months of the date you receive this decision. If you appeal to the Board of Contract Appeals, you may, solely at your election, proceed under the Board's small claims procedure for claims of $10,000 or less or its accelerated procedure for claims of $50,000 or less.

(e) The contracting officer's final decison will be forwarded to the contractor by certified mail, return receipt requested.

[51 FR 23070, June 25, 1986, and 52 FR 28559, July 31, 1987, as amended at 52 FR 28561, July 31, 1987; 54 FR 40065, Sept. 29, 1989]

833.212 Contracting officer's duties upon appeal.

(a) When a notice of appeal in any form has been received by the contracting officer, that officer will endorse thereon the date of mailing (or date of receipt, if otherwise conveyed) and within 10 days, will forward said original notice of appeal and a copy of the contracting officer's final decision letter to the Department of Veterans Affairs Board of Contract Appeals (VABCA). Copies of the notice of appeal and the final decision letter will be transmitted concurrently to the Deputy Assistant Secretary for Acquisition and Materiel Management (93) and the Assistant General Counsel (025). (In cases of construction contracts administered by the Office of Facilities, copies of appeal and final decision letter need not be transmitted to the Deputy Assistant Secretary for Acquisition and Materiel Management (93).)

(b) Within 20 days of receipt of an appeal, or advice that an appeal has been filed, the contracting officer will assemble and transmit to the VABCA, through the Office of General Counsel (025), an appeal file consisting of all documents pertinent to the appeal, including:

(1) The decision and findings of fact from which the appeal is taken;

(2) The contract, including specifications and pertinent amendments, plans and drawings,

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the VABC; and

(5) Any additional information considered pertinent.

[51 FR 23070, June 25, 1986; 51 FR 44179, Dec. 8, 1986, and 52 FR 28559, July 31, 1987]

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 834—MAJOR SYSTEMS ACQUISITION

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

834.002 Policy.

VA policy regarding major system acquisition is contained in Central Office Operating Instructions OI-1, Part VI, Chapter 11, "Major System Acquisitions." Normally, VA major system acquisitions involve a minimum of $50 million one time costs or $150 million life cycle costs. Persons wishing to review these procedures may obtain copies by writing the Associate Deputy Secretary for Information Resources Management (004), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

[49 FR 12618, Mar. 29, 1984]

PART 836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 836.2—Special Aspects of Contracting for Construction

Sec.
836.202 Specifications.
836.204 Disclosure of the magnitude of construction projects.
836.206 Liquidated damages.
836.208 Concurrent performance of firm fixed-price and other types of construction contracts.
836.209 Construction contracts with architect-engineer firms.
836.211 Distribution of advance notices and solicitations.

Subpart 836.3—Special Aspects of Sealed Bidding in Construction Contracting

836.302 Pre-solicitation notices.
836.371 Notice of proceed.

Subpart 836.6—Architect-Engineer Services

836.601 Policy.
836.602 Selection of firms for achitect-engineer contracts.
836.602-1 Selection criteria.
836.602-2 Evaluation boards.
836.602-3 Evaluation board functions.
836.602-4 Selection authority.
836.602-5 Procedure for procurements estimated not to exceed $10,000.
Sec.
836.606-70 General.
836.606-71 Architect-engineer's proposal.
836.606-72 Contract price.
836.606-73 Application of 6-percent architect-engineer fee limitation.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12618, Mar. 29, 1984, unless otherwise noted.

EDITORIAL NOTE: For nomenclature change, see 52 FR 49017, Dec. 29, 1987.

Subpart 836.2—Special Aspects of Contracting for Construction

836.202 Specifications.

The procedures described in Part 810 shall be applicable to construction specifications.

(a) Construction specifications which use "brand name or equal" purchase descriptions shall conform to the requirements of 810.004.

(b) The use of "brand name or equal" or other restrictive specifications by contract architect-engineers is specifically prohibited without the prior written approval of the contracting officer during the design stage. The contracting officer shall inform the prospective architect-engineers of this requirement during the negotiation phase, prior to award of contract for design.

(c) If it is determined that only one product will meet the Government's minimum needs and VA will not allow the submission of "equal" products, the bidders must be placed on notice that the "brand name or equal" provisions of the "Material and Workmanship" clause found at FAR 52.236.5 and any other provision which may authorize the submission of an "equal" product, will not apply. In order to properly alert bidders to this requirement, the clause found at 852.236-90, "Restriction on Submission and Use of Equal Products," shall be included in the solicitation.

[52 FR 282, Jan. 5, 1987, as amended at 53 FR 7756, Mar. 10, 1988; 53 FR 9631, Mar. 24, 1988; 54 FR 40065, Sept. 29, 1989]

836.204 Disclosure of the magnitude of construction projects.

In lieu of the estimated price ranges described in FAR 36.204, the magnitude of VA projects should be identified in advance notices and solicitations in terms of one of the following price ranges:

(a) Less than $25,000;
(b) Between $25,000 and $100,000;
(c) Between $100,000 and $250,000;
(d) Between $250,000 and $500,000;
(e) Between $500,000 and $1,000,000;
(f) Between $1,000,000 and $2,000,000;
(g) Between $2,000,000 and $5,000,000;
(h) Between $5,000,000 and $10,000,000;
(i) Between $10,000,000 and $20,000,000;
(j) Between $20,000,000 and $50,000,000;
(k) Between $50,000,000 and $100,000,000;
(l) More than $100,000,000.

(This section has been promulgated as a deviation to the FAR as provided in FAR Subpart 1.4.)

[53 FR 1631, Jan. 21, 1988]

836.206 Liquidated damages.

Liquidated damage provisions may be included in construction contracts when the criteria of 812.202 is met. If partial performance may be accepted and utilized to the advantage of the Government, the clause substantially as set forth in 852.212-70 will be included in addition to the clause set forth in FAR 52.212-5.

836.208 Concurrent performance of firm fixed-price and other types of construction contracts.

When concurrent contracts of the type specified in FAR 36.208 are considered necessary or advantageous, prior approval will be requested of the Chief Medical Director for contracts involving Maintenance and Repair (M&R) funds or of the Deputy Assistant Secretary for Facilities for contracts involving construction (major and minor) funds. Complete justification will be furnished in the request.

[49 FR 12618, Mar. 29, 1984, as amended at 54 FR 40065, Sept. 29, 1989]

836.209 Construction contracts with architect-engineer firms.

When it is considered necessary or advantageous to award a contract for construction of a project to a firm or person that designed the project, prior approval will be requested of the Chief Medical Director for contracts involving M&R funds or of the Deputy Assistant Secretary for Facilities for contracts involving construction funds. Complete justification will be furnished in the request.

836.211 Distribution of advance notices and solicitations.

(a) On the issue date shown on SF 1442, Solicitation, Offer and Award, specifications, drawings, and all other material necessary to prepare a bid will be issued to each eligible prospective bidder and other agencies who request them in writing and who meet the qualifications stated in the solicitation.

(b) On the issue date, two copies of the drawings and specifications for station level projects funded from construction appropriations will be furnished to the Deputy Assistant Secretary for Facilities.

(c) Distribution of specifications and drawings on Central Office projects will be in accordance with that established by the Project Director.

(d) Advance (presolicitation) notices should also be sent to Chambers of Commerce, Builders Exchanges, various trade journals, and other organizations which make a practice of publishing such information for the benefit of the construction industry. Drawings and specifications should be sent to Chambers of Commerce and Builders Exchanges when requested. These organizations frequently make drawings and specifications available for review and inspection to suppliers and subcontractors who cannot receive drawings and specifications from the Government.

Subpart 836.3—Special Aspects of Sealed Bidding in Construction Contracting

836.302 Pre-solicitation notices

A SF 1417, Pre-Solicitation Notice (Construction Contract), shall be used as a pre-solicitation notice on proposed contracts expected to equal or exceed $100,000. When so used, it will be submitted to prospective bidders at least 15 days prior to the date on which the drawings and specifications will be issued. When pre-solicitation notices are not used, see 836.211.

[49 FR 12618, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

836.371 Notice of proceed.

(a) Construction contractors will be given a written "Notice to Proceed" with the work. SF 1442 serves that purpose for contracts not in excess of $25,000 when completed by the contracting officer and returned to the contractor. For contracts exceeding $25,000, a letter will be used. A letter notice to proceed will normally be sent only after performance and payment bonds and the completed contract forms, where applicable, have been returned by the contractor and are accepted by the contracting officer. If the urgency of the work or other proper reason requires the contractor to begin work immediately, the award letter may include the "Notice to Proceed" with the reservation that payments are contingent upon receipt and approval of the required bonds.

(b) If the contract provides for liquidated damages, the notice to proceed will be sent by certified mail, return receipt requested. It will advise the contractor that the work will be completed within —— (insert contract time for completion) calendar days from the date of receipt shown on the certified mail receipt card returned by the post office.

(c) If the contract does not provide for liquidated damages, certified mail is not required. Notices to proceed for these contracts will establish a date for completion taking into consideration the time required for the notice to arrive by regular mail.

(d) At the time the notice to proceed is sent to the contractor, a copy will be furnished to the resident engineer or the Chief, Engineering Service. A copy of the notice to proceed will be filed with copy A of the contract. When certified mail is used, the certified mail receipt card returned by the post office will be attached to the copy of the notice to proceed. Copies of the notice to proceed will be filed with copies C and D of the contract after the date of receipt has been established and indicated thereon.

[49 FR 12618, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

Subpart 836.6—Architect-Engineer Services

836.601 Policy.

The provisions of this subpart pertain to the general policies and procedures for the procurement of professional architect-engineer services as set forth in FAR subpart 36.6 and are not applicable to contracts entered into pursuant to the authority of 38 U.S.C. 1820. The provisions of the Small Business Act are applicable to the procurement of architect-engineering services. Consequently, consideration of procurement set-asides for small business concerns will be made in accordance with FAR subpart 19.5.

836.602 Selection of firms for architect-engineer contracts.

836.602-1 Selection criteria.

In addition to the evaluation criteria set forth in FAR 36.602-1, the board will consider the factors set forth in this section as they apply to the project or purpose of the selection. Values will be assigned to each factor in determining the relative qualifications of the firms identified as qualified through the preselection process. The values may be confirmed or adjustments may be made as a result of the discussions.

(a) Reputation and standing of the firm and its principal officials with respect to professional performance, general management, and cooperativeness.

(b) Record of significant claims against the client because of improper or incomplete architectural and engineering services.

(c) Geographic location and facilities of the working office which would provide the professional services.

(d) Specific experience and qualifications of personnel proposed for assignment to the project, and record of working together as a team.

836.602-2 Evaluation boards.

Central Office architect-engineer contractors will be selected by the board appointed by the Deputy Assistant Secretary for Facilities. Field facility architect-engineer contractors will be selected by the board appointed by the facility director.

(a) The evaluation board will be chaired by the Director of the Architect-Engineer Evaluation Staff, or the Area Project Manager (or Deputy Area Project Manager) will be designated to act when necessary. The board's members as appointed by the Deputy Assistant Secretary for Facilities will include the appropriate Area Project Manager and as many qualified professional architects or engineers from the Office of Facilities technical services as may be considered appropriate for the particular project. Additional members from the Office of Facilities or from other VA administrations and staff offices will be designated for projects when appropriate.

(b) The evaluation board for a VA field facility will consist of no less than two members, one of whom will be the Chief, Supply Service, and the other the Chief, Engineering Service, or their alternates. Where a facility has two or more engineers on its staff, an additional engineer will be appointed to the board. The chairperson of the board will be the senior engineer.

[49 FR 12618, Mar. 29, 1984, as amended at 53 FR 1631, Jan. 21, 1988; 54 FR 40065, Sept. 29, 1989]

836.602-3 Evaluation board functions.

(a) The evaluation board will review the data submitted by the firms and from that file will preselect the firms which possess the basic qualifications for performing the services needed. The factors stated in the announcement publicizing the proposed procurement (see FAR 5.207) will be used in determining whether a firm is qualified for inclusion in the preselection list.

(b) In the evaluation of the qualifications of the firms on the preselection list, the board will perform the functions as outlined in FAR 36.602-3, applying the evaluation criteria set forth in FAR 36.602-1 and that established in 836.602-1. The board will recommend at least three firms for interviews to the Deputy Assistant Secretary for Facilities in the case of Central Office contracts, and to the field facility director in the case of facility contracts.

(c) After approval of the list of selected firms recommended for interviews by the Deputy Assistant Secretary for Facilities or by the facility director, the board will arrange discussions with each firm to obtain information, supplementing that which is already available. The board will select in order of preference, at least three firms considered the most highly qualified. This recommended listing will be submitted to the Deputy Assistant Secretary for Facilities or to the facility director, as appropriate, for consideration and approval before the contracting officer enters into negotiations with the top-rated firm.

[49 FR 12618, Mar. 29, 1984, as amended at 53 FR 1631, Jan. 21, 1988]

836.602-4 Selection authority.

The Deputy Assistant Secretary for Facilities (for Central Office contracts) and the facility director (for field facility contracts), or persons acting in those capacities, are designated as the approving officials for the recommendations of the evaluation boards.

[49 FR 12618, Mar. 29, 1984, as amended at 53 FR 1631, Jan. 21, 1988]

836.602-5 Procedure for procurements estimated not to exceed $10,000.

Either of the procedures provided in FAR 36.602-5 may be used when authorized by the Deputy Assistant Secretary for Facilities or the facility director.

[49 FR 12618, Mar. 29, 1984, as amended at 53 FR 1631, Jan. 21, 1988]

836.606-70 General.

Negotiations shall be conducted in accordance with FAR Part 15 and VAAR Part 815, beginning with the most preferred firm in the final selection. Application of the 6-percent fee limitation cited in FAR 15.903(d)(1)(ii) is set forth in 836.606-73. The policy set forth in that section and the provisions of FAR Part 15 provide all the available latitude in the negotiation of the contract price. The VAAR policy does not, however, relieve the contracting officer of the responsibility to determine that the fee negotiated is consistent with the services to be performed and the nature of the project. The contract ordinarily will cover all services to be rendered by the firm. To assure that the fee limitation is not violated, the contracting officer will maintain suitable records to be able to isolate the amount in the total fee to which the 6-percent limitation applies.

836.606-71 Architect-engineer's proposal.

The use of VA Form 08-6298, Architect-Engineer Fee Proposal, is mandatory for obtaining the proposal and supporting cost or pricing data from the contractor and subcontractor in the negotiation of all architect-engineer contracts for design services when the contract price is estimated to be $50,000 or over. The use of VA Form 08-6298 for design contracts less than $50,000 is at the discretion of the contracting officer. In obtaining architect-engineer services for research study, seismic study, master planning study, construction management and other related services contracts, VA Form 08-6298 shall also be used but supplemented or modified as needed for the particular project type. The contracting officer shall require the contractor or prospective contractor to submit (and to have any subcontractor or prospective subcontractor submit to the prime contractor or appropriate subcontractor tier) certified cost or pricing data when required by FAR Subpart 15.804.

836.606-72 Contract price.

Where negotiations with the top-rated firm are unsuccessful, the contracting officer will terminate the negotiations and undertake negotiations with the firm next in order of preference after authorization by the Deputy Assistant Secretary for Facilities or the facility director. Recommendation for award of the contract at the negotiated fee, will be submitted with a copy of the negotiation memorandum prepared in accordance with FAR 15.808 and, whenever a field pricing report has been received, to the Deputy Assistant Secretary for Facilities, or the facility director, as appropriate.

[52 FR 282, Jan. 5, 1987, as amended at 54 FR 40065, Sept. 29, 1989]

836.606-73 Application of 6-percent architect-engineer fee limitation.

(a) The 6-percent fee limitation on architect or engineer services set forth in section 304(b) of the Federal Property and Administrative Services Act of 1949, as amended, and referred to in FAR 15.903(d)(1)(ii), applies to those services generally required in preparing working drawings and specifications which form the basis for bidding and for the award of construction contract. The fixed fee limitation does not apply to the following architect or engineer services:

(1) Investigative services including but not limited to:

(i) Determination of program requirements including schematic or preliminary plans and estimates.

(ii) Determination of feasibility of proposed project.

(iii) Preparation of measured drawings of existing facility.

(iv) Subsurface investigation.

(v) Structural, electrical, and mechanical investigation of existing facility.

(vi) Surveys: Topographic, boundary, utilities, etc.

(2) Special consultant services not normally available in organizations of architects or engineers not specifically applied to the actual preparation of working drawings or specifications of the project for which the services are required.

(3) Other:

(i) Reproduction of approved designs through models, color renderings, photographs, or other presentation media.

(ii) Travel and per diem allowances other than those required for the development and review of working drawings and specifications.

(iii) Supervision or inspection of construction, review of shop drawings or samples and other services performed during the construction phase.

(iv) All other services that are not integrally a part of the production and delivery of plans, designs, and specifications.

(4) The cost of reproducing drawings and specifications for bidding and their distribution to prospective bidders and plan file rooms.

(b) The total cost of the architect or engineer services contracted for may not exceed 6 percent of the estimated cost of the construction project plus the estimated cost of related services and activities such as those shown in paragraph (a) of this section. To support project submissions, VA Form 10-1193, Application for Health Care Facility Project, and VA Form 10-6238, EMIS Construction Program-Estimate Worksheet, will be used and the proposed technical services shown where necessary and applicable.

PART 837—SERVICE CONTRACTING

Subpart 837.1—Service Contracting—General

Sec.

837.103 Contracting officer responsibility.
837.104 Personal services contracts.

Subpart 837.2—Consulting Services

837.200 Scope of subpart.
837.203 Types of consulting services.
837.204 Policy.
837.205 Management controls.
837.270 Special controls for letters of agreement.
837.271 Management and professional services.
837.271-1 Scope.
837.271-2 Definition.
837.271-3 Guidelines for use of contracts for management and professional services.
837.271-4 Approval for use of contractual services.
837.271-5 Contract administration.

Sec.

APPENDIX A INFORMATION TO BE INCLUDED IN REQUESTS FOR CONTRACTUAL SERVICES
APPENDIX B MANAGEMENT AND PROFESSIONAL SERVICES AND SPECIAL STUDIES AND ANALYSES

Subpart 837.3—Dismantling, Demolition, or Removal of Improvements

837.300 Scope of subpart.

Subpart 837.70—Mortuary Services

837.7001 General.
837.7002 List of qualified funeral directors.
837.7003 Funeral authorization.
837.7004 Administrative necessity.
837.7005 Unclaimed remains—all other cases.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12620, Mar. 29, 1984, unless otherwise noted.

Subpart 837.1—Service Contracts—General

837.103 Contracting officer responsibility.

When the contracting officer determines that legal assistance is necessary in determining whether a proposed service contract is for personal or nonpersonal services, he/she shall gather all the pertinent facts and request the opinion of District Counsel responsible for servicing the VA facility involved.

837.104 Personal services contracts.

(a) Personal service contracts having an employer-employee relationship, except to the extent indicated in 815.204 and Subpart 837.2, shall not be awarded but will be consummated in accordance with VA Manual MP-5, Parts I and II.

(b) In addition to the elements used in assessing whether or not a contract is personal in nature identified in FAR 37.104(d), the following circumstances may also indicate a possible personal service contract.

(1) The contract does not call for an end product which is adequately described in the contract.

(2) The contract price or fee is based on the time actually worked rather than the results to be accomplished.

(3) Office space, equipment and supplies for contract performance are to be furnished by the Department of Veterans Affairs.

(4) Contractor personnel are to be used interchangeably with Department of Veterans Affairs personnel to perform the same function.

(5) The Department of Veterans Affairs retains the right to control and direct the means and methods by which contractor personnel accomplish the work.

[49 FR 12620, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

Subpart 837.2—Consulting Services

837.200 Scope of subpart.

This subpart implements FAR Subpart 37.2 and supplements it with the Department control procedures established pursuant to OMB guidance. This subpart also applies to the procurement of management and professional services, special studies and analysis, and the management and support services for research and development activities as indicated in 837.271.

[49 FR 12620, Mar. 29, 1984, as amended at 54 FR 40065, Sept. 29, 1989]

837.203 Types of consulting services.

For the purpose of this subpart the definition of consulting services shall, in addition to examples listed in FAR 37.203, include peer review of research proposals.

837.204 Policy.

In addition to policy considerations listed in FAR 37.204, contracting officers will be guided by the following additional policy.

(a) Consulting services will normally be obtained only on an intermittent or temporary basis; repeated or extended arrangements are not to be entered into except under extraordinary circumstances.

(b) Grants and cooperative agreements will not be used as legal instruments for consulting service arrangements.

(c) A competitive solicitation is the preferred method of obtaining consulting services and should be used to the maximum extent practicable to insure that costs are reasonable. To that end, requests for approval of the use of consulting services must be made in sufficient time to enable the appropriate procurement action to be taken. A firm fixed-price (FFP) contract is the preferred contract type and will be used to the maximum extent possible. The contracting officer will determine the feasibility of using an FFP contract and may solicit further detail from the requesting official in order to make that determination.

(d) Sponsoring offices will avoid any contact or discussion with prospective contractors that may impinge on the integrity of the procurement process. Final selection of contractors and negotiation of terms, conditions and prices are matters lying solely within the province of the contracting officer.

(e) Requesting official submitting requirements for consulting services will submit work statements which are specific, complete, and which specify fixed periods of service. End products must be specific and unambiguous, and defined in terms which directly relate to the problem at hand.

(f) Sole-source contracts for consulting services resulting from unsolicited proposals are generally not appropriate. Therefore, when a using activity receives an unsolicited proposal for consulting services, and determines it has a need for such services, a contracting officer shall synopsize the requirement for publication in the Commerce Business Daily to determine if there are other qualified contractors interested in submitting a proposal. Qualified contractors shall be solicited.

(g) If program or contracting officials become aware of serious deficiencies in the performance of duties and responsibilities outlined in this subpart, they will report such deficiencies to their respective administration head or staff office director for corrective action. These reports, including corrective actions taken, will be forwarded to the Senior Procurement Executive.

[49 FR 12620, Mar. 29, 1984, as amended at 54 FR 40065, Sept. 29, 1989]

837.205 Management controls.

(a) *Contracting officer responsibilities.* (1) The contracting officer is responsible for making the determination that the requirements submitted by the requesting official are in fact consulting services. The contracting officer will be guided by definitions in FAR 37.201. Upon an affirmative determination that consulting services are being requested, the contracting officer will insure that all justifications for approval required by 837.205(c) are prepared and submitted properly.

(2) The contracting officer will require as a condition of the contract that the contractor will submit all reports with covers which display the following information:

(i) Name and business address of the contractor.

(ii) Contract number.

(iii) Dollar amount of award (including modifications).

(iv) Type of award, i.e., competitive or noncompetitive.

(v) Identification of the official who requested the consulting services, including the name of the organization and telephone number.

(vi) The following notation will be included:

NOTE: Pub. L. 97-101, section 412, requires that upon the transfer of the contents of this report, or any other Government document, the new document shall appropriately identify the contract and contractor involved in the development of this report.

(3) The contracting officer is responsible for assessing actual and potential organizational conflicts of interest. These determinations will be governed by 809.5. The contracting officer should pay particular attention to proposed contract requirements which call for advice on future Department decisions to contract, particularly when the development of specifications and work statements is involved.

(b) *Technical support.* (1) Contracting officers will designate a representative of the sponsoring officer as the Contracting Officer's Technical Representative (COTR).

(2) The designated COTR will monitor contract performance in accordance with the plan required by Appendix A of this subpart and submit to the contracting officer all resulting documentation for inclusion in the contract file.

(3) No consulting contract file will be closed out until the sponsoring official has provided for the file a written evaluation of the performance of each consulting contractor as well as a statement of the extent to which the contractor's report (or other end product) has been used or is expected to be used. Also, the contracting officer should, in conjunction with the responsible program official, compare the original contract cost with the final cost and determine the nature of any other deviations from the original contract specifications. Any irregularities should be reported to the Inspector General. Final evaluations should also specify reasons for rejecting any of the contractor's recommendations.

(4) Copies of all final evaluations should be sent to the Deputy Assistant Secretary for Acquisition and Materiel Management (93).

(c) *Approval procedures.* (1) Contracts for consulting services will be approved by the Secretary regardless of amount, except as provided for in 837.270. The methodology for obtaining the approvals required by this paragraph are set forth in paragraph (c)(3) of this section. However, no request for approval of procurement shall be initiated by a contracting officer without the requirement for consulting services first having received the review required in paragraph (c)(2) of this section.

(2) Prior to the submission of an approval request to a contracting officer as required by paragraph (c)(3) of this section, the activity requesting the consulting services will have such requirements reviewed and approved at one level above the activity and, if occurring during the fourth quarter, two levels above. At field facilities this initial review need not exceed the facility director. In Central Office this review need not exceed administration heads, Deputy Assistant Secretaries, or staff office directors for requirements emanating within their respective jurisdictions. The purpose of this initial review will be to notify management in the chain of command of all consulting services requirements, and to

insure that departmental policy pertaining to such services has been adhered to, including any budget restrictions imposed by the Office of Management and Budget.

(3) The approval of the Secretary will be requested by means of a notification of intent prepared by the contracting officer in the form of a letter or memorandum and submitted through channels to the Deputy Assistant Secretary for Acquisition and Materiel Management. The Deputy Assistant Secretary for Acquisition and Materiel Management will review the submission for consistency of application of agency policy, and will be responsible for maintaining a consolidated record of requests submitted to the Secretary and the results of those submissions. Subsequent to that review, the notices will be forwarded for the approval of the administration heads, Deputy Assistant Secretaries, or staff office directors having jurisdiction over the requesting activity. The General Counsel and the Principal Deputy Assistant Secretary for Finance and Planning will also review and concur in the requests.

(4) The notification of intent will cite the pertinent authority warranting negotiation and, in addition to any required determination and findings, will contain the information indicated in Appendix A to this subpart as applicable to the proposed procurement. Where a specific individual or concern is proposed, the notification of intent will also include a statement as to any previous or current contracts with that individual or concern, and as to the consideration given to organizational conflicts of interest.

(5) The approval of the Secretary is in addition to and does not replace technical and legal reviews of contract documents prior to award prescribed elsewhere in these regulations.

(d) *Contract data reporting.* (1) The contracting officer will take care to report correctly a contract award for consulting services in the Federal Procurement Data System.

(2) A separate log (in addition to any station contract register) for all consulting services contracts, regardless of dollar value, will be maintained at the procuring activity for management control purposes. Log entries will be made on separate sheets of paper for each contract award and in the following format:

(i) Contract/obligation number.

(ii) Date of award.

(iii) Requesting service.

(iv) Type of award, i.e., competitive or noncompetitive.

(v) Name and address of awardee.

(vi) Contract price.

(vii) A short narrative description of the work to be performed.

(3) The contracting officer will forward a copy of each log entry on standard size plain white bond paper to the Deputy Assistant Secretary for Acquisition and Materiel Management (93) on a quarterly basis. Log entries should be received in Central Office no later than 15 days after the end of each quarter. Upon receipt of log entries, the Office of Acquisition and Materiel Management (93) will immediately enter all submissions into the consolidated listing. Negative responses, if applicable, are required on an annual basis and should be received in Central Office no later than 15 days after the end of the fiscal year. Reports Control Symbol 90-0411 has been assigned to this report.

(4) Upon a change in status of a consultant contract, i.e., termination, modification, extension or completion, the contracting officer wil annotate the log entry and resubmit a copy of the entry to the Deputy Assistant Secretary for Acquisition and Materiel Management (93).

[49 FR 12620, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 54 FR 40065, Sept. 29, 1989]

837.270 Special controls for letters of agreement.

(a) Letters of agreement may be used to procure consulting services and advisory board memberships only by those individuals designated in 801.670-14(a) and individuals delegated authority under the conditions specified in paragraph (b) of that section, and will be limited to a value of $500 per letter and to an accumulated annual total of $2,500 to any individual or firm. Letters of agreement should only be used where normal procurement channels are not feasible and only for obtaining the following services:

(1) Consultant services including peer review of research proposals and advisory board memberships.

(2) Management and professional services (837.271)

(3) Instructors and training obtained pursuant to section 4122 of Title 38, United States Code.

(b) The delegated official will perform or have performed for each letter of agreement all those duties and requirements prescribed in this subpart, as modified by paragraphs (c) and (d) of this section. That official will also insure that all reporting requirements are completed for each action.

(c) The administration head or staff office director will be the highest level approving official for each procurement action which does not exceed $500 in consulting fees (excluding travel, per diem and other travel-related costs) and which does not award more than an accumulated total of $2,500 per year in consulting fees to any individual or firm. (Consulting services anticipated to exceed these dollar limitations will not be obtained through letters of agreement.)

(d) In lieu of the requirements outlined in Appendix A of this subpart 837.2, justifications for letters of agreement will provide a statement of need and will certify that such services do not unnecessarily duplicate any previously performed work or services. The justification will also certify that the procurement action will not violate post-employment restrictions prescribed in the Ethics in Government Act and 803.101-3.

(e) All procurements for consulting services accomplished through letters of agreement will be entered into the agency consolidated listing of consultant contracts in the format prescribed by 837.205(d). All such log entries applicable to Central Office activities shall be forwarded to the Deputy Assistant Secretary for Acquisition and Materiel Management (93). The office shall also be responsible for entering such information pertaining to Central Office letters of agreement into the Federal Procurement Data System.

[49 FR 12620, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 54 FR 40065, Sept. 29, 1989]

837.271 Management and professional services.

837.271-1 Scope.

(a) The controls in this section are applicable to management and professional services, special studies and analyses and management and support services for research and development. Specific types of services to be controlled are listed in Appendix B of this subpart. Management and support services for research and development are the same services listed in Appendix B when procured with Research and Development funds. However, the controls do not apply to the conduct of research and development.

(b) Services in other than the categories listed in Appendix B are also controlled if covered by the definition in 837.271-2 and either represent unusual, nonroutine requirements or requirements having significant impact on Department operations. Contracting officers will be responsible for making such determinations.

(c) This section does not apply to contracts for the medical, dental and ancillary care of beneficiaries or to contracts for the provision of other services directly to beneficiaries, such as educational services.

[49 FR 12620, Mar. 29, 1984, as amended at 54 FR 40065, Sept. 29, 1989]

837.271-2 Definition.

The term "management and professional services" means those services related to the performance of operating functions of an agency, involving knowledge of an advanced type, and requiring the use of discretion and judgment. Management and professional services differ from consulting services in that the latter term refers to services of a purely advisory nature. Both categories of services involve selection of the contractor on the basis of qualifications, rather than price alone, and are therefore normally procured by negotiation.

837.271-3 Guidelines for use of contracts for management and professional services.

(a) Contracts are appropriate when:

(1) Unusual or peak workloads occur that cannot be accomplished by Government personnel.

(2) Work involved is of an intermittent, occasional, or one-time nature for which the hiring of Government personnel is not feasible.

(3) They result in a more economical method of performing the work (see OMB Circular No. A-76, revised.)

(b) Contracts are inappropriate (improper or illegal) when:

(1) The service involves exercising a Governmental judgment; i.e., managing programs requiring value judgments; selection of priorities; direction of Federal employees; and all regulatory responsibilities.

(2) An employer-employee relationship would be established or involved.

(3) They circumvent personnel salary or ceiling limitations.

[49 FR 12620, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

837.271-4 Approval for use of contractual services.

(a) All contracts controlled by this section require the approval of the Secretary except as provided in paragraph (b) of this section. The procedure to be used in obtaining approval is the same as that required for consulting service as prescribed in 837.205(c). The format and content of the supporting justification will be the same as that in Appendix A of this subpart.

(b) Contracts not exceeding $500 may be approved by the heads of facilities, without higher level review, for requirements emanating at the local level. In Central Office, contracts not exceeding $500 may be approved at one level above the requesting activity, without higher level review. Supporting justifications will be the same as required in paragraph (a) of this section.

(c) The approvals of officials designated in paragraphs (a) and (b) of this section are in addition to and do not replace the technical and legal reviews of contract documents prior to award prescribed elsewhere in these regulations.

[49 FR 12620, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

837.271-5 Contract administration.

(a) All the basic policy considerations contained in 837.204 are applicable to services controlled herein, including the development of work statements which are specific, complete and which specify fixed periods of service and the solicitation of other qualified sources for proposed sole-source awards emanating from unsolicited proposals.

(b) All responsibilities of contracting officers and their technical representatives as prescribed in 837.205, Contracting requirements, will apply to services controlled by this section, including the monitoring of contractor performance and the final evaluation of end products.

(c) All reporting requirements contained in 837.205(d) are applicable to services controlled by this section.

APPENDIX A—INFORMATION TO BE INCLUDED IN REQUESTS FOR CONTRACTUAL SERVICES

Requests for approval to procure contractual services, whether with individuals or firms, must contain statements on the following items where applicable. Items other than those listed may be added to clarify or justify the request.

Problem or Project

1. Description of the problem or project.
2. Length of time this problem or condition has existed.
3. Effect on the mission should the problem continue to exist.
4. Specific examples of losses or excessive costs caused by the problem.
5. Whether the proposed study or project is a small segment of a much greater project. If so, elaborate on the complete study or project and state what action will be taken concerning the overall project when this segment is completed.
6. Alternative approaches available to perform this work, and reasons for eliminating each approach.
7. Previous attempts to solve the problem or perform the work and their results, with an explanation why they were unsuccessful if that was the case.

8. Results or end products sought. End products can be as simple as a report containing recommendations, or as lengthy and detailed as a completely installed system for management.

9. Efforts made to determine if similar studies or other sources of information already exist, and whether this proposed effort duplicates other efforts known to have taken place or which are ongoing.

10. Whether a lack of equipment has a bearing on this problem. If so, what attempts were made to remedy the situation?

11. Type of skills required to solve problem or accomplish the project.

Personnel

12. Whether a shortage of qualified personnel has a bearing on the problem. If so, what attempts were made to remedy the situation?

13. Number of in-service personnel by descriptive title to be made available to work with the contractor.

14. If the services of a specific individual are requested, specific reasons why this individual or another equally competent individual cannot be temporarily employed as authorized by personnel regulations.

15. If a request is for a specific individual, reasons for selecting that person over other suitable persons. List of other suitable persons, or explanation if there are none.

Firms

16. If a specific firm is recommended, reasons for selecting it over other suitable firms, or explanation if there are none.

Cost of Contract and Funds

17. Estimated cost of contract.

18. Identification of funds to be used to pay for contract.

Attachments

19. Copies of staff studies and papers bearing on the problem.

20. Copy of proposed contract work statement.

Automated Data Processing

21. If the request includes a requirement for services related to ADP, a copy of any reports or requests submitted to GSA pursuant to FIRMR Subpart 201-36.47.

Evaluation

22. The methodology by which contractor performance will be monitored including how departures from the original contract specifications will be documented and approved.

23. The methodology by which the final product will be evaluated and by whom.

Advance Procurement Planning

24. Does the requirement fall within the activity's advance procurement plan, and if not, why?

[49 FR 12620, Mar. 29, 1984, as amended a 50 FR 794, Jan. 7, 1985]

APPENDIX B—MANAGEMENT AND PROFESSIONAL SERVICES AND SPECIAL STUDIES AND ANALYSES

Federal procurement data system service code	Category
	Professional Services
R402	Management Data Collectio Services.
R405	Operations Research Servic
R406	Policy Review/Developme Services.
R407	Program Evaluation Services.
R408	Program Management/Supp Services.
R409	Program Review/Developme Services.
R410	Public Relations Services.
R412	Simulations.
R413	Specifications Developme Services (Nonconstruction).
R498	Other Professional Services.
	Special Studies and Analyses
R505	Cost Benefit Analyses.
R507	Economic/Socio-Economic an Labor Studies.
R513	Feasibility Studies (Nonco struction).
R521	Historical Studies.
R524	Mathematical/Statistical Analyses.
R527	Recreation Studies.
R528	Regulatory Studies.
R529	Scientific Data Studies (No medical).
R537	General Health Studies.
R599	Other Special Studies an Analyses.

Subpart 837.3—Dismantling, Demolition, or Removal of Improvements

837.300 Scope of subpart.

Contracting officers should be cognizant of the requirements contained in VA Manual MP-3, Part II, Chapter 6, for approval necessary prior to entering into a contract for disposal of VA real property. Such approval(s) shall be included in the contract file.

Subpart 837.70—Mortuary Services

837.7001 General.

This subpart establishes the policies and procedures governing the procurement of funeral and burial services for deceased beneficiaries of the Department of Veterans Affairs, as provided in 38 U.S.C. 903.

837.7002 List of qualified funeral directors.

Contracting officers will establish, in coordination with cognizant Medical Administration Service personnel, a list of funeral directors capable of performing the burial services specified in 837.7003. The contracting officer will attempt to establish a commitment to perform these services within the statutory limitation of $300. Each funeral director must be fully licensed in the jurisdiction in which the business operates. If there has been no prior experience with the funeral director which would ensure the adequacy of the funeral director's services and casket, arrangements will be made prior to contract negotiation to inspect the premises and the casket to be provided, and to check with the local business bureau and/or Chamber of Commerce. Certification of the funeral director's adequacy will be added to the list prescribed in this section.

837.7003 Funeral authorization.

(a) When a veteran dies while receiving care in a Department of Veterans Affairs health care facility or in a non-Department of Veterans Affairs institution at Department of Veterans Affairs expense, and the decedent's remains are unclaimed, the Chief, Medical Administration Service, will forward to the Chief, Supply Service, a properly executed VA Form 10-2065, Funeral Arrangements, requesting that funeral and burial services for the deceased be procured. Burial will be made in the nearest National Cemetery having available grave space.

(b) The contracting officer will enter into negotiations with local funeral directors to procure a complete funeral and burial service within the statutory allowance of $300. This service will consist of and will be specified on the purchase order, VA Form 90-2138, Order for Supplies or Services, as follows:

(1) Preparation of the body, embalming.

(2) Clothing.

(3) Casket. (The casket, as a minimum, will be constructed from thick, strong particle board and must be of sufficient strength to support the weight of an adult human body. Cardboard or press paper or similar materials are not acceptable).

(4) Securing all necessary permits.

(5) Ensuring that a United States Flag (provided the funeral director in accordance with Veterans Health Services and Research Administration Manual M-1, Part I, paragraph 14.40) accompanies the casket to place of burial.

(c) An additional allowance for transportation of the body to the place of burial is provided in 38 U.S.C. 903(a)(2). This allowance will cover the transportation cost of shipment of the body by common carrier or by hearse from the VA facility to the funeral home and to the place of burial, any charges for an outside (shipment) box, and the charges for securing all necessary permits for removal or shipment of the body. These costs are not chargeable against the $300 allowance.

(d) In accordance with Veterans Health Services and Research Administration Manual M-1, Part I, paragraph 14.37, the contracting officer will designate the Chief, Medical Administration Service, or representative, to be responsible for the medical inspection of the mortuary services performed and inspection of the merchandise furnished. This designee will also be responsible for certifying receipt on the receiving report.

(e) The Chief, Supply Services, will assist the Chief, Medical Administration Service, in developing the local procedures specified in Veterans Health Services and Research Administration Manual M-1, Part I, paragraph 14.37c.

[49 FR 12620, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 54 FR 40065, Sept. 29, 1989]

837.7004 Administrative necessity.

(a) When persons die under Department of Veterans Affairs care who are not legally entitled to such care at Department of Veterans Affairs expense, and no relatives or friends will claim the remains, and the municipal, county or State officials refuse to provide for final disposition, arrangements will be made and expenses assumed for burial locally under separate contractual agreement.

(b) When a full and complete funeral and burial service as prescribed in 837.7003 cannot be obtained by the contracting officer within the statutory allowance, he/she will, prior to taking any further action, secure from the facility director a written determination that the disposition of the remains must be accomplished by the Department of Veterans Affairs as an administrative necessity. The facility director will also authorize in writing the expenditure of such additional funds as may be necessary for this purpose. The amount of these additional funds will be held to the minimum, keeping in mind, however, that the deceased must be given a proper and fitting interment.

(c) The determination and authorization by the facility director will be made a part of the contract file.

[49 FR 12620, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 54 FR 40065, Sept. 29, 1989]

837.7005 Unclaimed remains—all other cases.

Requests for information on the disposition of the unclaimed remains of a veteran whose death occurs while not under the direct care or treatment of the Department of Veterans Affairs will be referred to the Veterans Services Officer for processing in accordance with Veterans Benefits Administration Manual M27-1, Part II. This manual is available at any Department of Veterans Affairs regional office, medical center or VA office.

[49 FR 12620, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 842—CONTRACT ADMINISTRATION

Sec.
842.000 Scope of part.
842.070 Definition.

Subpart 842.1—Interagency Contract Administration and Audit Services

842.101 Policy.
842.102 Procedures.

Subpart 842.2—Assignment of Contract Administration

842.202 Assignment of contract administration.

Subpart 842.7—Indirect Cost Rates

842.705 Final indirect cost rates.

Subpart 842.8—Disallowance of Costs

842.801-70 Audit assistance prior to disallowing costs.
842.803 Disallowing cost after incurrence.

Subpart 842.12—Novation and Change-of-Name Agreements

842.1203 Processing agreements.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12624, Mar. 29, 1984, unless otherwise noted.

842.000 Scope of part.

This part applies to all contracts, whether sealed bid or negotiated. (See 801.602-70 for requirements for legal review of certain contract administration actions.)

[49 FR 12624, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 51 FR 23072, June 25, 1986; 52 FR 28559, July 31, 1987]

842.070 Definition.

Contract Administration is the coordination of actions required for the performance of a contract including the guidance and supervision necessary to assure that all contractural obligations are fulfilled.

Subpart 842.1—Interagency Contract Administration and Audit Services

842.101 Policy.

(a) Pursuant to FAR policy encouraging interagency cross-servicing in field contract support services, contracting officers of the Department of Veterans Affairs will utilize the support services of other agencies to the extent feasible. Examples of such services are: preaward surveys; quality assurance and technical inspection of contract items; and review of contractors' procurement systems. Requirements for support services available from any other Government department or agency will be obtained on the basis of an approved negotiated interagency support agreement.

(b) An interagency support agreement is a written instrument of understanding executed between the parties to the agreement. The agreement should state clearly the accord which has been reached between the two parties involved, especially the obligations assumed by the rights granted each. The agreement will be specific with respect to resources to be provided by both the supplying and receiving activities. It will also provide for funding and reimbursement arrangements, and clauses permitting revisions, modifications thereto, or cancellation thereof, will be included.

842.102 Procedures.

(a) The Department of Defense Directory of Contract Administration Services Components and the Directory of Federal Contract Audit Offices are available through the Department of Veterans Affairs Forms and Publications Depot.

(b) Proposed interagency support agreements with any other Government department or agency involving the expenditures of Department of Veterans Affairs funds of $5,000 of more will be forwarded by the facility director (or Central Office official) to the Deputy Assistant Secretary for Acquisition and Materiel Management (91), who will transmit with recommendation to the General Counsel for legal review and approval, as required by 801.602-70(a)(4).

(1) Proposed agreements, both new and renewal, will be submitted in an original and four copies so as to reach Central Office 60 days prior to the effective date of the agreement.

(2) Complete justification for all proposed agreements will be submitted, as approval depends on the adequacy of the justification.

[49 FR 12624, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

Subpart 842.2—Assignment of Contract Administration

842.202 Assignment of contract administration.

Proposed assignments of contract administration responsibility outside of the procuring activity will be forwarded by the facility director to the Deputy Assistant Secretary for Acquisition and Materiel Management (91), who will transmit the proposal to the General Counsel for legal review and approval, as required by 801.602-70(a)(6) and 801.602-71. Complete justification will be provided, specifically addressing the need for and benefits to be provided by assignment of contract administration. (See 801.603-70 for policy on designating representatives of contracting officers, and FAR 30.401 for contracts involving Cost Accounting Standards.)

[49 FR 12624, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

Subpart 842.7—Indirect Cost Rates

842.705 Final indirect cost rates.

(a) Contracting officers will request audits on proposed final indirect cost rates and billing rates for use in cost reimbursement, fixed price incentive and fixed price redeterminable contracts as described in FAR Subpart 42.7 unless the quick-closeout procedures described in FAR 42.708 are used. In this case, the contracting officers will perform a review and validation of the contractor's data submitted for accuracy and reasonableness of the proposed rates for negotiating the settlement of indirect costs for a specific contract.

(b) Contracting officers in the Office of Acquisition and Materiel Management and Office of Facilities who are located in the VA Central Office have the option to request audits directly from the cognizant audit agencies or requesting audits through the Assistant Inspector General for Policy, Planning and Resources (53C). All other contracting officers located in the VA Central Office and the Office of the General Counsel will send requests for audit to the Assistant Inspector General for Policy, Planning and Resources (53C). Contracting officers located at field facilities, Marketing Center and supply depots are required to arrange for the audits through the Deputy Assistant Secretary for Acquisition and Materiel Management or the Deputy Assistant Secretary for Facilities. The Assistant Inspector General for Policy, Planning and Resources (53C) will provide such accounting assistance or technical advice as is deemed desirable by the contracting officers.

[49 FR 12624, Mar. 29, 1984, as amended at 52 FR 49017, Dec. 29, 1987; 54 FR 40065, Sept. 29, 1989]

Subpart 842.8—Disallowance of Costs

842.801-70 Audit assistance prior to disallowing costs.

When a contracting officer determines during the performance of a cost reimbursement, fixed price incentive or fixed price redetermination contract exceeding the thresholds specified in FAR 15.804-2, that costs should be disallowed, audit assistance will be requested. Such requests submitted by field facility contracting officers will be directed to the Deputy Assistant Secretary for Acquisition and Materiel Management (93) for review and forwarding to the Assistant Inspector General for Auditing (52), or other recognized audit agency, e.g., the Defense Contract Audit Agency.

842.803 Disallowing cost after incurrence.

Contracting officers may approve contractors' vouchers for payment and process them to the servicing fiscal office. Such approval must be within the limitations of the contracting officer and the contract for which the voucher is submitted must be within the contracting officers delegation of contracting authority. (Note 842.801-70 regarding disallowing costs.)

Subpart 842.12—Novation and Change-of-Name Agreements

842.1203 **Processing agreements.**

Prior to execution of novation and change-of-name agreements by a Department of Veterans Affairs contracting officer, he/she will forward the agreement and related documents to the Office of General Counsel for review as to legal sufficiency. The documents will be submitted through the same channels as those prescribed for legal review of contracts in 801.602-72.

PART 846—QUALITY ASSURANCE

Subpart 846.3—Contract Clauses

Sec.
846.302 Fixed price supply contracts.
846.302-70 Inspection.

Subpart 846.4—Government Contract Quality Assurance

846.403 Inspection at destination.
846.408-70 Inspection of subsistence.
846.408-71 Waiver of USDA inspection and specifications.
846.408-72 Supply depot selection of samples for test.
846.470 Use of commercial organizations for inspections and grading services.
846.471 Determination authority.
846.472 Inspection of repairs for properties under the Loan Guaranty and Direct Loan Programs.
846.472-1 Repairs of $1,000 or less.
846.472-2 Repairs in excess of $1,000.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12625, Mar. 29, 1984, unless otherwise noted.

Subpart 846.3—Contract Clauses

846.302 **Fixed price supply contracts.**

846.302-70 **Inspection.**

Contracts for property will include the clause 852.210-72(a), "Rejected Goods," except that contracts for packinghouse, dairy products, bread and bakery products, and fresh and frozen fruits and vegetables will include the clause prescribed in 852.210-72(b), "Rejected Goods."

Subpart 846.4—Government Contract Quality Assurance

846.403 **Inspection at destination.**

(a) When inspection upon delivery indicates the items received are not in compliance with contract requirements, a report will be made to the contracting officer.

(b) VA supply depots will report all instances of noncompliance to the contracting officer on VA Form 10-2055, Sample Transmittal Sheet and Inspection Report. The supply depots are authorized to correct packaging, packing, or marketing not in accordance with contract requirements when the cost of correcting a partial receipt or projected cost of correcting total receipt does not exceed $100. When projected costs exceed $100, authorization will be obtained from the contracting officer prior to taking corrective action. The corrections made and the actual amount to be charged to the vendor will be shown on the reverse of VA Form 10-2055.

[49 FR 12625, Mar. 29, 1984; 51 FR 37027, Oct. 17, 1986]

846.408-70 **Inspection of subsistence.**

(a) The contracting officer will determine at the time of issuance of the solicitation whether inspection for specification compliance will be made: (1) Prior to shipment by representatives of the U.S. Department of Agriculture (USDA) or the Department of Commerce, or (2) at the time of delivery by personnel of the purchasing activity. The place of inspection will be indicated in the solicitation.

(b) Since the requirement for USDA or Department of Commerce inspections and certifications results in additional contractor costs which may be ultimately reflected in bid prices, the contracting officer, in consultation with the Chief, Dietetics Service, must evaluate the need for such inspections. The evaluation shall include the following:

(1) The quality assurance already provided by other mandatory inspection systems;

(2) The proposed suppliers' own quality control system;

(3) Experience with the proposed suppliers;

(4) The feasibility of prequalifying suppliers' quality assurance systems and subsequently waiving certifications for future solicitations; and

(5) The cost of the inspections.

(c) When either the USDA or the Department of Commerce is indicated as the inspection activity, the solicitation will also provide that the contractor is responsible for:

(1) Arranging and paying for inspection services.

(2) Obtaining from the inspection activity a certificate indicating the product complies with specifications. Such certificate, or copy, should accompany the shipment or be furnished to the receiving installation prior to shipment. The contractor shall notify the installation when the certificate is not immediately available.

(3) Seeing that acceptable products are covered by an inspection agency checkloading certificate or stamped by the inspector as prescribed by the contracting officer. Products not so identified shall be rejected.

(4) Furnishing samples for inspection at his/her expense.

(5) Indicating the address where inspection will be made.

(d) The contracting officer will furnish a copy of the purchase document to the inspecting activity.

[49 FR 12625, Mar. 29, 1984, as amended at 51 FR 37027, Oct. 17, 1986; 54 FR 40065, Sept. 29, 1989]

846.408-71 Waiver of USDA inspection and specifications.

(a) Contracting officers may purchase butter; cheese (except cottage cheese); sausage; meat food products; [1] bacon, smoked; and bacon, Canadian style, without reference to the specifications in Federal Hospital Subsistence Guide G-1, and the USDA inspection requirements, when the amount of an item to be purchased will not exceed 500 pounds per delivery. When these items are procured together with items that are not exempt, the solicitation shall include the following:

> Items * * * are not required to be in accordance with the specifications contained in Federal Hospital Subsistence Guide G-1, and the special USDA inspection is not required. Inspection for quality and condition will be made by VA upon delivery at destination. These items are, however, subject to the quality controls stated herein.

(b) As appropriate, the following statements shall be included in each invitation for bid, request for proposal or purchase order:

(1) Butter. This product must be graded by the USDA and labeled "Grade A" or the grade specified herein.

(2) Sausage and meat food products:

(i) This product must be a high commercial product and shall have been prepared in a federally inspected plant and bear the USDA establishment number stamp which evidences that it is sound, healthful, wholesome and fit for human consumption; and

(ii) This product must bear a label complying with the Federal Food, Drug and Cosmetic Act which requires that all ingredients be listed according to the order of their predominance.

(3) Bacon, smoked; and bacon, Canadian style. This product must be a high commercial product and shall have been prepared in a federally inspected plant and bear the USDA establishment number stamp which evidences that it is sound, healthful, wholesome, and fit for human consumption.

(c) When using a "brand name or equal" purchase description every brand name item that is known to be acceptable and available in the area will be listed.

[49 FR 12625, Mar. 29, 1984, as amended at 51 FR 37028, Oct. 17, 1986]

---

[1] Meat food products shall mean processed foods containing meat in substantial proportion and other listed ingredients including seasoning, e.g., frankfurters, coldcuts. Whole or prefabricated meats, e.g., pork chops, hamburger, are considered meats, not meat food products.

846.408-72 Supply depot selection of samples for test.

(a) The number of samples to be selected will be as stated in the item specifications or as specified by the contracting officer for items without lot numbers.

(b) On items bearing lot numbers, one unit will be selected from each lot to be tested, unless otherwise specified. Contracts will require that the contractor's shipping document or packing list indicate the lot numbers of items shipped to each depot on the contract. To reduce handling and transportation costs, samples of lots received at more than one location will be submitted as follows:

(1) The VA Supply Depot, Hines, Illinois, will submit samples from all lots received.

(2) The VA Supply Depot, Somerville, New Jersey, will submit samples from lots not received at Hines.

(3) The VA Supply Depot, Bell, California, will submit samples from lot not received at Hines or Somerville.

(c) On drug items, when there is only one unit in the lot to be tested or when five or more lots on the same order require sampling, the contracting officer will be notified and requested to furnish instructions. Such notification will be transmitted by teletype.

(d) To facilitate handling and packing, samples may be consolidated into one package. However, under no circumstances will shipment of samples be held more than 48 hours from time of receipt.

846.470 Use of commercial organizations for inspections and grading services.

Commercial organizations may be used for inspection and grading services when it is determined that the results of a technical inspection or grading are dependent upon the application of scientific principles or specialized techniques, and it is further determined that:

(a) The Department of Veterans Affairs is unable to employ the personnel qualified to properly perform the services and is unable to locate another Federal agency capable of providing the service.

(b) The inspection or grading results issued by a private organization are essential to verify the acceptance or rejection of a special commodity.

(c) The services may be performed without direct Government supervision.

[49 FR 12625, Mar. 29, 1984, as amended at 54 FR 40065, Sept. 29, 1989]

846.471 Determination authority.

The determinations required in 846.470 will be made by:

(a) The Director, Office of Construction, for those items and services for which purchase authority has been assigned to him/her.

(b) The Director, Veterans Canteen Service, VHS&RA, for those items and services purchased, or contracted for, by the Veterans Canteen Service (except those items purchased from Department of Veterans Affairs supply sources).

(c) The Deputy Assistant Secretary for Acquisition and Materiel Management for all other supplies, equipment and services.

846.472 Inspection of repairs for properties under the Loan Guaranty and Direct Loan Programs.

Final inspection will be made of all repair programs upon completion. In addition such intermediate or progress inspections will be made on extensive or technical jobs as specified in the contract.

846.472-1 Repairs of $1,000 or less.

(a) Generally, inspections required will be made by the management broker. If the property has not been assigned to a management broker or if it has been determined that the nature of the repairs requires supervision by a technician, the inspection will be made by a qualified fee or staff inspector.

(b) There is no form prescribed for this inspection but VA Form 26-1839, Compliance Inspection Report, may be used if desired. Regardless of the form in which the report is submitted, it will be in sufficient detail to identify the contractor, property, and the repair program and to enable the contracting officer to make a determination that the work is being performed satisfactorily or completed in accordance with the terms of the contract.

846.472-2 Repairs in excess of $1,000.

(a) The final inspection and any intermediate or progress inspections on repairs exceeding $1,000 will be made by a qualified fee or staff inspector. If a management broker is qualified to supervise major repairs, he/she may be authorized to conduct the inspections.

(b) Report of inspections will be made on VA Form 26-1839, Compliance Inspection Report. The form will be completed to identify the property, contractor, and repair program and will also include such detailed information to enable the contracting officer to make a determination that the work is being performed satisfactorily or that it has been completed in accordance with the contract terms. Any deficiencies noted will be itemized and explained in detail.

PART 847—TRANSPORTATION

Subpart 847.3—Transportation in Supply Contracts

847.303-1 F.o.b. origin.
847.303-70 F.o.b. origin, freight prepaid, transportation charges to be included on the invoice.
847.304 Determination of delivery terms.
847.304-1 General.
847.305-70 Potential destinations known but quantities unknown.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12327, Mar. 29, 1984, unless otherwise noted.

Subpart 847.3—Transportation in Supply Contracts

847.303-1 F.o.b. origin.

(a) Normally shipments falling within this category will be shipped on a Government bill of lading, except for those shipments covered by 41 CFR 101-41.304-2.

(b) Shipment of flat bronze markers by the vendor, as directed by the Director, Monument Service, or his/her designee, will be made by parcel post. VA Form 40-4951, Order for Flat Bronze Marker, will be used for this purpose.

847.303-70 F.o.b. origin, freight prepaid, transportation charges to be included on the invoice.

(a) The delivery terms will be stated as "f.o.b. origin, transportation prepaid, with transportation charges to be included on the invoice," under each of the following circumstances:

(1) When it has been carefully determined that an f.o.b. origin purchase or delivery order will have transportation charges not in excess of $100 and the occasional exception does not exceed that amount by an unreasonable amount;

(2) Single parcel shipments via express, courier, small package, or similar carriers, *regardless of shipping cost*, if the parcel shipped weighs 70 pounds or less and does not exceed 108 inches in length and girth combined;

(3) Multi-parcel shipments via express, courier small package, or similar carriers for which transportation charges do not exceed $250 per shipment.

(b) Orders issued on VA Form 90-2138, Orders for Supplies or Services, will direct the vendor's attention to shipping instructions on the reverse of the form. When VA Form 90-2138 is not used, the vendor will be instructed as follows:

(1) Consistent with the terms of the contract, pack, mark and prepare shipment in conformance with carrier requirements to protect the personal property and assure assessment of the lowest applicable transportation charge.

(2) Add transportation charges as a separate item on your invoice. The invoice must bear the following certification: "The invoiced transportation charges have been paid and evidence of such payment will be furnished upon the Government's request."

(3) Do not include charges for insurance or valuation on the invoice unless the order specifically requires that the shipment be insured or the value be declared.

(4) Do not prepay transportation charges on this order if such charges are expected to exceed $100. Ship col-

lect and annotate the commercial bill of lading, "To be converted to Government Bill of Lading."

(c) Each contracting officer is responsible for:

(1) Making a diligent effort to obtain the most accurate estimate possible of transportation charges; and

(2) Utilizing the authority in paragraph (a) of this section only when consistent with the circumstances in that paragraph.

(d) When in accordance with FAR Subpart 28.3 and FAR 47.102 it is determined that a shipment is to be insured or the value declared, the vendor will be specifically instructed to do so on the order, when a written order is used. If the order is an oral order, all copies of the purchase request will be annotated to show that insurance/declared value was specifically requested.

847.304 Determination of delivery terms.

847.304-1 General.

When alternative delivery terms are appropriate but the contracting officer elects to use only one in the invitation for bids, or request for proposals, he shall document the contract file to show his reasons for so doing.

847.305-70 Potential destinations known but quantities unknown.

When the VA Marketing Center contracts for decentralized procured items by all Department of Veterans Affairs installations, the evaluation of bids must follow specific procedures. To place each bid on an equal basis, even though specific quantities required by each hospital cannot be predetermined, an anticipated demand factor will be used in proportion to the number of hospital beds or patient workload. The clause prescribed in 852.247-70 shall be used in these instances.

PART 849—TERMINATION OF CONTRACTS

Subpart 849.1—General Principles

Sec.

849.106 Fraud and other criminal conduct.

849.107 Audit of prime contract settlement proposals and subcontract settlements.

849.111 Review and approval of proposed settlements.

849.111-70 Settlement review boards.

849.111-71 Required review and approval.

849.111-72 Submission of information.

Subpart 849.4—Termination for Default

849.402 Termination of fixed-price contracts for default.

849.402-6 Repurchase against contractor's account.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12628, Mar. 29, 1984, unless otherwise noted.

EDITORIAL NOTE: For nomenclature change, see 52 FR 42439, Nov. 5, 1987.

Subpart 849.1—General Principles

849.106 Fraud or other criminal conduct.

When the circumstances set forth in FAR 49.106 are encountered, the contracting officer will immediately discontinue all negotiations. The contracting officer will submit all of the pertinent facts necessary to support his/her reasoning to the Deputy Assistant Secretary for Acquisition and Materiel Management (93), (or the Deputy Assistant Secretary for Facilities (08) in the case of contracting officers from the Office of Facilities). The Deputy Assistant Secretary for Acquisition and Materiel Management (93), or the Office of Facilities will review the submission and fully develop the facts. If the evidence indicates fraud or other criminal conduct, the Deputy Assistant Secretary for Acquisition and Materiel Management will forward the submission with his/her recommendations, through channels (to include the General Counsel, if appropriate), to the Inspector General (51) for referral to the Department of Justice. The contracting officer will be advised by the Deputy Assistant Secretary for Acquisition and Materiel Management or the Office of Facilities as to any further action to be taken. Pending receipt of this advice, the matter will not be discussed with the contractor. No collection, recovery or other settlement action will be initiated while the matter is in the hands of the Department of Justice without first obtaining the concurrence of the U.S. Attorney concerned, through the Inspector General. If inquiry is made by the contractor, he/she will be advised only that the proposal has been forwarded to higher authority.

849.107 Audit of prime contract settlement proposals and subcontract settlements.

Contracting officers will submit settlement proposals for review and audit prior to taking any further action, in accordance with the provisions and claim limitations applicable to prime and subcontractors as set forth in FAR 49.107. Contracting officers in the Office of Acquisition and Materiel Management and Office of Facilities who are located in the VA Central Office have the option to request audits directly from the cognizant audit agencies or to request audits through the Assistant Inspector General for Policy, Planning and Resources (53C). All other contracting officers located in the VA Central Office and the Office of General Counsel will send requests for audit to the Assistant Inspector General for Policy, Planning and Resources (53C), to request audits directly from the cognizant agencies. Audit control numbers may be obtained verbally from the Deputy Assistant Secretary for Acquisition and Materiel Management (93D).

[49 FR 12628, Mar. 29, 1984, as amended at 52 FR 42440, Nov. 5, 1987; 54 FR 40065, Sept. 29, 1989]

849.111 Review and approval of proposed settlements.

849.111-70 Settlement review boards.

The Deputy Assistant Secretary for Acquisition and Materiel Management and the Deputy Assistant Secretary for Facilities will each establish within his/her own organization a settlement review board. The board may be established on a permanent or temporary basis. More than one such board may be established if settlements are to be made at different locations, if personnel with different qualifications are needed for different contracts, or if for other reasons, the establishment of more than one board is considered desirable. Each settlement review board should be composed of at least three qualified and disinterested employees. The membership of each board should include at least one lawyer and one accountant.

849.111-71 Required review and approval.

Prior to executing a settlement agreement, or issuing a determination of the amount due under the termination clause of a contract, or approving or ratifying a subcontract settlement, the contracting officer shall submit each such settlement or determination for review and approval by a settlement review board if:

(a) The amount of settlement, by agreement or determination, involves $50,000 or more; or

(b) The settlement or determination is limited to adjustment of the fee of a cost-reimbursement contract or subcontract, and:

(1) In the case of a complete termination, the fee, as adjusted, is $50,000 or more; or

(2) In the case of a partial termination, the fee, as adjusted, with respect to the terminated portion of the contract or subcontract is $50,000 or more; or

(c) The head of the contracting activity concerned determines that a review of a specific case or class of cases is desirable; or

(d) The contracting officer, in his/her discretion, desires review by the settlement review board.

849.111-72 Submission of information.

(a) The contracting officer shall submit to the appropriate settlement review board a statement of the proposed settlement agreement or determination, supported by such detailed information as is required for an adequate review. This information should normally include copies of:

(1) The contractor's or subcontractor's settlement proposal,

(2) The audit report,

(3) The property disposal report and any required approvals in connection therewith,

(4) The contracting officer's memorandum explaining the settlement, and

(5) Any other relevant material that will assist the board in arriving at a decision to approve or disapprove the proposal. The board may, in its discretion, require the submission of additional information.

(b) When a review of a proposed settlement is required and the contract covers supplies, equipment or services, other than construction chargeable to Construction Appropriations, the contracting officer will submit the proposed settlement or determination to the settlement review board through the Deputy Assistant Secretary for Acquisition and Materiel Management.

(c) When the contract covers construction chargeable to Construction Appropriations and review is required, the proposed settlement or determination will be submitted by the contracting officer to the settlement review board through the Deputy Assistant Secretary for Facilities.

Subpart 849.4—Termination for Default

849.402 Termination of fixed-price contracts for default.

849.402-6 Repurchase against contractor's account.

(a) VA Form 90-2237, Request, Turn-in, and Receipt for Property or Services, or the file copy of the purchase order covering the purchase of supplies, equipment or services against a defaulting contractor shall be annotated to show the name of the defaulted contractor, the contract number, the contract price, the name of the contractor from whom procurement is made, the price paid, the competition secured and the difference in cost, if any, to the Department of Veterans Affairs. When reprocurement results in the payment of excess costs and the purchase is made through the Supply Fund, the excess costs, when collected, shall be deposited to the credit of the Supply Fund. In all other instances, the excess costs, when collected, shall be deposited to General Fund Receipts.

(b) Contracting officers, when purchasing against a defaulted contractor, shall procure the items in a manner that will protect the interests of the contractor as well those of the Government.

SUBCHAPTER H—CLAUSES AND FORMS

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 852.1—Instructions for Using Provisions and Clauses

Sec.

852.101 Using Part 852.

Subpart 852.2—Texts of Provisions and Clauses

852.203-70 Ethics in Government Act.
852.207-70 Report of employment under commercial activities.
852.207-71 Notice of cost comparison.
852.207-72 Cost comparison criteria—VA medical facilities.
852.208-70 Changes in rates for public utilities.
852.209-70 Organizational conflicts of interest.
852.210-70 Requirements for operating and maintenance manuals.
852.210-71 Guarantee clause.
852.210-72 Inspection.
852.210-73 Frozen processed foods.
852.210-74 Telecommunications equipment.
852.210-75 Technical industry standards.
852.210-76 Noncompliance with packaging, packing and/or marking requirements.
852.210-77 Brand name or equal.
852.212-70 Liquidated damages.
852.214-70 Caution to bidders—bid envelopes.
852.214-71 Alternate items.
852.214-73 Bid samples.
852.216-70 Estimated quantities for requirements contracts.
852.219-70 Veteran-owned small business.
852.222-70 Contract Work Hours and Safety Standards Act—nursing home care contract supplement.
852.228-70 Bond premium adjustment.
852.229-70 Purchases from patient's funds.
852.229-71 Purchases for patients using Government funds and/or personal funds of patients.
852.233-2 Service of protest.
852.233-70 Protest content.
852.236-70 Clauses and provisions for fixed-price construction contracts.
852.236-71 Specifications and drawings for construction.
852.236-72 Performance of work by the contractor.
852.236-73 Bonds.
852.236-74 Inspection of construction.
852.236-75 Guaranty.
852.236-76 Correspondence.
852.236-77 Reference to "standards".

Sec.

852.236-78 Government supervision.
852.236-79 Daily report of workers and materials.
852.236-80 Subcontracts and work coordination.
852.236-81 Work coordination (alternate provision).
852.236-82 Payments under fixed-price construction contracts (without NAS).
852.236-83 Payments under fixed-price construction contracts (including NAS).
852.236-84 Schedule of work progress.
852.236-85 Supplementary labor standards provisions.
852.236-86 Workman's compensation.
852.236-87 Safety requirements.
852.236-88 Contract changes.
852.236-89 Buy American Act.
852.236-90 Restriction on submission and use of equal products.
852.236-91 Special notes.
852.237-70 Contractor responsibilities.
852.237-71 Indemnification and insurance (vehicle and aircraft service contracts).
852.247-70 Transportation provision for bid evaluation.
852.270-1 Representatives of contracting officers.
852.270-2 Bread and bakery products.
852.270-3 Purchase of shell fish.
852.270-4 Commercial advertising.
852.271-70 Services provided eligible beneficiaries.
852.271-71 Visits to Department of Veterans Affairs guidance centers.
852.271-72 Time spent by counselee in counseling process.
852.271-73 Use and publication of counseling results.
852.271-74 Inspection.
852.271-75 Extension of contract period.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 852.1—Instructions for Using Provisions and Clauses

852.101 Using Part 852.

Part 852 prescribes supplemental provisions and clauses to the FAR. Provision and clause numbering are as prescribed in FAR 52.101 (e.g, supplementary Architect-Engineer and Construction clauses are numbered 852.236-70, 852.236-71, etc.).

[50 FR 794, Jan. 7, 1985]

Subpart 852.2—Texts of Provisions and Clauses

852.203-70 Ethics in Government Act.

As prescribed by 803.101-3 the following provision will be made a part of all solicitations and requests for proposals anticipated to result in contracts exceeding the small purchase limitation:

CERTIFICATION FOR THE ETHICS IN GOVERNMENT ACT (APR 1984)

The offeror certifies that in developing a proposal in response to the solicitation of this contract, he/she did not utilize the services of any former Department of Veterans Affairs employee acting in violation of Title V of the Ethics in Government Act, 18 U.S.C. 207. That law provides that:

(a) A former Department of Veterans Affairs employee who, as such an employee, personally and substantially participated in a particular procurement process, is prohibited from appearing before the Department on behalf of an offeror responding to a solicitation resulting from that process and from making any contact with the Department on behalf of the offeror with intent of influencing action related to the solicitation;

(b) A former Department of Veterans Affairs employee who, during the last year as such an employee, was officially responsible for a particular procurement process, is prohibited, for two years after leaving the Department of Veterans Affairs, from appearing before the Department on behalf of an offeror responding to a solicitation resulting from that process and from making any contact with the Department on behalf of the offeror with the intent of influencing action related to the solicitation;

(c) Any former top-level Department of Veterans Affairs employee (i.e., executive-level employee; employee paid at the rate of GS-17 or above if designated pursuant to 5 CFR 737.25(b); and Senior Executive Service employee if designated pursuant to 5 CFR 737.25(b)) who, as such an employee, personally and substantially participated in a particular procurement process, is prohibited, for a period of two years, from representing, aiding, consulting, or assisting an offeror by presence before the Government at any formal or informal appearance related to that procurement process;

(d) For a period of one year, any former top-level employee of the Department of Veterans Affairs (as described in the preceding paragraph) is prohibited from appearing before the Department of Veterans Affairs on behalf of any offeror responding to a contract solicitation and is prohibited from making any oral or written communications with the Department of Veterans Affairs on behalf of such an offeror, with the intent of influencing action related to a contract.

(End of Provision)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 54 FR 40065, Sept. 29, 1989]

852.207-70 Report of employment under commercial activities.

As prescribed in 807.304-75, the following clause will be included in A-76 cost comparison solicitations:

REPORT OF EMPLOYMENT UNDER COMMERCIAL ACTIVITIES (OCTOBER 1988)

(a) Consistent with the Government post-employment conflict of interest regulations, the contractor shall give adversely affected Federal employees the right of first refusal for all employment openings under this contract for which they are qualified.

(b) *Definitions.* (1) An "adversely affected Federal employee" is:

(i) Any permanent Federal employee who is assigned to the government commercial activity, or

(ii) Any employee identified for release from his or her competitive level or separated as a result of the contract.

(2) "Employment openings" are position vacancies created by this contract which the contractor is unable to fill with personnel in the contractor's employee at the time of the contract award, including positions within a 50 mile radius of the commercial activity which indirectly arise in the contractor's organization as a result of the contractor's reassignment of employees due to the award of this contract.

(3) The "contract start date" is the first day of contractor performance.

(c) *Filling employment openings.* (1) For a period beginning with contract award and ending 90 days after the contract start date, no person other than an adversely affected Federal employee on the current listing provided by the contracting officer shall be offered an employment opening until all adversely affected and qualified Federal employees identified by the contracting officer have been offered the job and refused it.

(2) The contractor may select any person for an employment opening when there are no qualified adversely affected Federal employees on the latest current listing provided by the contracting officer.

(d) *Contracting reporting requirements.* (1) No later than five working days after contract award the contractor shall furnish the contracting officer with the following:

(i) A list of employment openings including salaries and benefits.

(ii) Sufficient job application forms for adversely affected Federal employees.

(2) By contract start date, the contractor shall provide the contracting officer with the following:

(i) The names of adversely affected Federal employees offered an employment opening.

(ii) The date the offer was made,

(iii) A brief description of the position,

(iv) The date of acceptance of the offer and the effective date of employment,

(v) The date of rejection of the offer, if applicable for salary and benefits contained in the rejected offer, and

(vi) The names of any adversely affected Federal employees who applied but were not offered employment and the reason(s) for withholding an offer.

(3) For the first 90 days after the contract start date, the contractor shall provide the contracting officer with the names of all persons hired or terminated under the contract within five working days of such hiring or termination.

(e) *Information provided to the contractor.* (1) No later than 10 working days after the contract award, the contracting officer shall furnish the contractor a current list of adversely affected Federal employees exercising the right of first refusal, along with their completed job application forms.

(2) Between the contract award and start dates, the contracting officer shall inform the contractor of any reassignment or transfer of adversely affected employees to other Federal positions.

(3) For a period up to 90 days after contract start date, the contracting officer will periodically provide the contractor with an updated listing of adversely affected Federal employees reflecting employees recently released from their competitive levels or separated as a result of the contract award.

(f) *Qualification determination.* The contractor has a right under this clause to determine adequacy of the qualifications of adversely affected Federal employees for any employment openings. However, an adversely affected Federal employee who held a job in the Government commercial activity which directly corresponds to an employment opening shall be considered qualified for the job. Questions concerning the qualifications of adversely affected Federal employees for specific employment openings shall be referred to the contracting officer for determination. The contracting officer's determination shall be final and binding on all parties.

(g) *Relation to other statutes, regulations and employment policies.* The requirements of this clause shall not modify or alter the contractor's responsibilities under statutes, regulations or other contract clauses pertaining to the hiring of veterans, minorities or handicapped persons.

(h) *Penalty for Noncompliance.* Failure of the contractor to comply with any provision of this clause may be grounds for termination for default.

(End of Clause)

[53 FR 43211, Oct. 28, 1988; 53 FR 46872, Nov. 21, 1988]

852.207-71 Notice of cost comparison.

When authorized in accordance with 807.304-72, the FAR provision 52.207-1, Notice of Cost Comparison (Sealed-Bid), or 52.207-2, Notice of Cost Comparison (Negotiated), whichever is appropriate, will be supplemented with the following provision for the circumstances prescribed:

(a) When only COCO bids or only GOCO bids will be accepted:

NOTICE OF COST COMPARISON (OCTOBER 1988)

(a) Reference is made to the provision "Notice of Cost Comparison (Sealed-Bid) or (Negotiated)," FAR 52.207-1 (or 52.207-2).

(b) Bidders (offerors) are placed on notice that no contract will be awarded, irrespective of cost comparison results, unless *two or more responsive and responsible financially autonomous bidders* (offerors) respond to this solicitation.

(End of Provision)

(b) If GOCO and COCO bids/offers will be considered, the following supplemental provision will be used:

NOTICE OF COST COMPARISON—SUPPLEMENT (OCTOBER 1988)

(a) Reference is made to the provision "Notice of Cost Comparison (Sealed-Bid) or (Negotiated)," FAR 52.207-1 (or 52.207-2).

(b) Bidders (offerors) are placed on notice that this solicitation allows contractors to bid (offer) on the basis of Contractor-owned, Contractor-operated (COCO) and/or Government-owned, Government-operated (GOCO) basis. However, a COCO method of performance will only be considered if two or more responsive and responsible financially autonomous firms bid (offer) on a COCO basis, and a GOCO bid will only be considered if two or more responsive and responsible financially autonomous firms bid (offer) on a GOCO basis.

(End of Provision)

[53 FR 43212, Oct. 28, 1988; 53 FR 46872, Nov. 21, 1988]

852.207-72 Cost comparison criteria—VA medical facilities.

As prescribed in 807.302(a), the following provision will be included in the solicitation for cost comparison of VHS&RA activities currently performed at VA medical centers by VA employees.

COST COMPARISON CRITERIA—VA MEDICAL FACILITIES (OCTOBER 1988)

Bidder/offerors are placed on notice that the cost comparison calculations will conform to the criteria prescribed in Title 38, United States Code, Section 5010. In accordance with Section 5010(c)(21), a contract award will not be made unless the total cost of performance over the first five years of such performance (including the cost to the Government of conducting the study) is lower by 15 percent or more than the cost of performance by Federal employees.

(End of Provision)

[53 FR 43212, Oct. 26, 1988; 53 FR 46872, Nov. 21, 1988]

852.208-70 Change in rates for public utilities.

When a contract covers services to be rendered by a public service corporation, and the rates charged for such services are regulated by a Federal, State, or municipal commission, the following provision will be included:

CHANGE IN RATES (APR 1984)

The rates specified herein are not in excess of those charged the general public for similar service and will be increased or decreased when such action is approved by the governing regulatory commission.

(End of Provision)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

852.209-70 Organizational conflicts of interest.

The following provision will be used as prescribed in 809.508-2:

ORGANIZATIONAL CONFLICTS OF INTEREST (APR 1984)

(a) The offeror represents to the best of his/her knowledge and belief that the award of the contract would not involve organizational conflicts of interest as defined in this representation. The term organizational conflicts of interests shall mean that a relationship exists whereby an offeror or a contractor (including his/her chief executive, directors, proposed consultants and subcontractors) has interests which may: (1) Diminish his/her capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product; or (2) result in an unfair competitive advantage. It does not include the "normal flow of benefits" from the performance of a contract.

(b) Based on this representation and any other information solicited by the contracting officer, it may be determined organizational conflicts of interest exist which would warrant disqualifying the contractor for award of the contract unless the organizational conflicts of interest can be mitigated to the contracting officer's satisfaction by negotiating terms and conditions of the contract to that effect. In the case of a formally advertised solicitation, the apparent successful offeror may enter into a supplemental agreement which mitigates the organizational conflicts of interest.

(c) Nondisclosure or misrepresentations of organizational conflicts of interest at the time of the offer, or arising as a result of a modification to the contract, may result in the termination of the contract at no expense to the Government.

(End of Provision)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

852.210-70 Requirements for operating and maintenance manuals.

(a) Solicitations and requests for proposals for technical medical and other technical equipment and devices issued by a field facility will normally require the contractor to provide operating and maintenance manuals.

(b) The purpose of the requirement is for the manufacturer to provide the Department of Veterans Affairs a manual or groups of manuals that will allow the in-house repair of the equipment purchased. Unless the facility Chief, Engineering Service, indicates that such service manuals are not needed, each invitation for bid or request for proposal for technical medical or other technical equipment and devices will include the following clauses for operating and maintenance manuals:

SERVICE DATA MANUAL (NOV 1984)

(a) The successful bidder will supply operation/service (maintenance) manuals with each piece of equipment in the quantity specified in the solicitation and resulting purchase order. As a minimum, the manual(s) shall be bound and equivalent to the manual(s) provided the manufacturer's designated field service representative as well as comply with all the requirements in paragraphs (b) through (i) of this clause. Sections, headings and section sequence identified in (b) through (i) of this clause are typical and may vary between manufacturers. Variances in the sections, headings and section sequence, however, do not relieve the manufacturer of his responsibility in supplying the technical data called for therein.

(b) *Title Page and Front Matter*—The title page shall include the equipment nomenclature, model number, effective date of the manual and the manufacturer's name and address. If the manual applies to a particular version of the equipment only, the title page shall also list that equipment's serial number. Front matter shall consist of the Table of Contents, List of Tables, List of Illustration s and a frontispiece (photograph or line drawing) depicting the equipment.

(c) *Section I, General Description*—This section shall provide a generalized description of the equipment or devices and shall describe its purpose or intended use. Included in this section will be a table listing all pertinent equipment specifications, power requirements, environmental limitations and physical dimensions.

(d) *Section II, Installation*—Section II shall provide pertinent installation information. It shall list all input and output connectors using applicable reference designators and functional names as they appear on the equipment. Included in this listing will be a brief description of the function of each connector along with the connector type. Instructions shall be provided as to the recommended method of repacking the equipment for shipment (packing material, labeling, etc.).

(e) *Section III, Operation*—Section III will fully describe the operation of the equipment and shall include a listing of each control with a brief description of its function and step-by-step procedures for each operating mode. Procedures will use the control(s) nomenclature as it appears on the equipment and will be keyed to one or more illustrations of the equipment. Operating procedures will include any preoperational checks, calibration adjustments and operation tests. Notes, cautions and warnings shall be set off from the text body so they may easily be recognizable and will draw the attention of the reader. Illustrations should be used wherever possible depicting equipment connections for test, calibration, patient monitoring and measurements. For large, complex and/or highly versatile equipment capable of many operating modes and in other instances where the Operation Section is quite large, operational information may be bound separately in the form of an Operators Manual. The providing of a separate Operators Manual does not relieve the supplier of his responsibility for providing the minimum acceptable maintenance data specified herein.

Where applicable, flow charts and narrative descriptions of software shall be provided. If programming is either built-in and/or user modifiable, a complete software listing shall be supplied. Equipment items with software packages shall also include diagnostic routines and sample outputs. Submission information shall be given in the Maintenance Section to identify equipment malfunctions which are software related.

(f) *Section IV, Principles of Operation*—This section shall describe in narrative form the principles of operation of the equipment. Circuitry shall be discussed in sufficient detail to be understood by technicians and engineers who possess a working knowledge of electronics and a general familiarity with the overall application of the devices. The circuit descriptions should start at the overall equipment level and proceed to more detailed circuit descriptions. The overall description shall be keyed to a functional block diagram of the equipment. Circuit descriptions shall be keyed to schematic diagrams discussed in paragraph (i) below. It is recommended that for complex or special circuits, simplified schematics should be included in this section.

(g) *Section V, Maintenance*—The maintenance section shall contain a list of recommended test equipment, special tools, preventive maintenance instructions and corrective information. The list of test equipment shall be that recommended by the manufacturer and shall be designated by manufacturer and model number. Special tools are those items not commercially available or those that are designed specifically for the equipment being supplied. Sufficent data will be provided to enable their purchase by the Department of Veterans Affairs. Preventive maintenance instructions shall consist of those recommended by the manufacturer to preclude unnecessary failures. Procedures and the recommended frequency of performance shall be included for visual inspection, cleaning, lubricating, mechanical adjustments and circuit calibration. Corrective maintenance shall consist of the data necessary to troubleshoot and rectify a problem and shall include procedures for realigning and testing the equipment. Troubleshooting shall include either a list of test points with the applicable voltage levels or waveforms that would be present under a certain prescribed set of conditions, a troubleshooting chart listing the symptom, probable cause and remedy, or a narrative containing sufficient data to enable a test technician or electronics engineer to determine and locate the probable cause of malfunction. Data shall also be provided describing the preferred method of repairing or replacing discrete components mounted on printed circuit boards or located in areas where special steps must be followed to disassemble the equipment. Procedures shall be included to realign and test the equipment at the completion of repairs and to restore it to its original operating condition. These procedures shall be supported by the necessary waveforms and voltage levels, and data for selecting matched components. Diagrams, either photographic or line, shall show the location of printed circuit board mounted components.

(h) *Section VI, Replacement Parts List*—The replacement parts list shall list, in alphanumeric order, all electrical/electronic, mechanical and pneumatic components, their description, value and tolerance, true manufacturer and manufacturers' part number.

(i) *Section VII, Drawings*—Wiring and schematic diagrams shall be included. The drawings will depict the circuitry using standard symbols and shall include the reference designations and component values or type designators. Drawings shall be clear and legible and shall not be engineering or productions sketches.

(End of Clause)

(c) Solicitations and requests for proposals for mechanical equipment (other than technical medical equipment and devices) issued by a field facility will include the following clause:

SERVICE DATA MANUAL (NOV 1984)

The contractor agrees to furnish two copies of a manual, handbook or brochure containing operating, installation, and maintenance instructions (including pictures or illustrations, schematics, and complete repair/test guides as necessary). Where applicable, it will include electrical data and connection diagrams for all utilities. The instructions shall also contain a complete list of all replaceable parts showing part number, name, and quantity required.

(End of Clause)

(d) When the bid or proposal will result in the initial purchase (including each make and model) of a centrally procured item, the following clause will be used:

SERVICE DATA MANUAL (NOV 1984)

The contractor agrees, when requested by the contracting officer, to furnish not more than three copies of the technical documentation required by paragraph 852.210-70(a) to the Service and Reclamation Division, VA Supply Depot, Hines, Ill. In addition, the contractor agrees to furnish two additional copies of the technical documentation required by 852.210-70(a) above with each piece of equipment sold as a result of the invitation for bid or request for proposal.

(End of Clause)

[50 FR 795, Jan. 7, 1985; 54 FR 40065, Sept. 29, 1989]

852.210–71 Guarantee clause.

(a) When the bid or proposal will result in any purchase of equipment, the following clause will be used:

GUARANTEE (NOV 1984)

The contractor guarantees the equipment against defective material, workmanship and performance for a period of ———,[1] said guarantee to run from date of acceptance of the equipment by the Government. The contractor agrees to furnish, without cost to the Government, replacement of all parts and material which are found to be defective during the guarantee period. Replacement of material and parts will be furnished to the Government at the point of installation, if installation is within the continental United States, or f.o.b. the continental U.S. port to be designated by the contracting officer if installation is outside of the continental United States. Cost of installation of replacement material and parts shall be borne by the contractor. [2]

(End of Clause)

(b) Where it is industry policy to furnish, but not install, replacement material and parts at the contractor's expense, the last sentence will be changed to indicate that cost of installation shall be borne by the Government. Where it is industry policy to: (1) Guarantee components for the life of the equipment (i.e., crystals in transmitters and receivers in radio communications systems); or (2) require that highly technical equipment be returned to the factory (at contractor's or Government's expense) for replacement of defective materials or parts, the clause used will be compatible with such policy.

---

[1] Normally, insert one year. If industry policy covers a shorter or longer period, i.e., 90 days or for the life of the equipment, insert such period.

[2] The above clause will be modified to conform to standards of the industry involved.

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 796, Jan. 7, 1985]

852.210-72 Inspection.

(a) Contracts for property, other than packing house and dairy products and fresh and frozen fruits and vegetables will contain the following clause:

REJECTED GOODS (NOV 1984)

Rejected goods will be held subject to contractor's order for not more than 15 days, after which the rejected merchandise will be returned to the contractor's address at his/her risk and expense. Expenses incident to the examination and testing of materials or supplies which have been rejected will be charged to the contractor's account.

(End of Clause)

(b) Contracts for packinghouse and dairy products, bread and bakery products and for fresh and frozen fruits and vegetables will contain the following clause:

REJECTED GOODS

The contractor shall remove rejected supplies within 48 hours after notice of rejection. Supplies determined to be unfit for human consumption will not be removed without permission of the local health authorities. Supplies not removed within the allowed time may be destroyed. The Department of Veterans Affairs will not be responsible for nor pay for products rejected. The contractor will be liable for costs incident to examination of rejected products.

(End of Clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

852.210-73 Frozen processed foods.

The following clause will be included in all solicitations for the purchase of frozen processed foods, issued by a field facility:

FROZEN PROCESSED FOODS (NOV 1984)

The products delivered under this contract shall be in excellent condition, shall not show evidence of defrosting, refreezing, or freezer burn and shall be transported and delivered to the consignee at a temperature of 0 degrees Fahrenheit or lower.

(End of Clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 796, Jan. 7, 1985; 54 FR 40065, Sept. 29, 1989]

852.210-74 Telecommunications equipment.

(a) When a detailed purchase description of formal specification is the basis for solicitations for telecommunications equipment as defined in VA Manual MP-6, Part VIII, (available at any Department of Veterans Affairs facility), solicitations, including those for construction, will include the following provision:

SPECIAL NOTICE (APR 1984)

Descriptive literature. The submission of descriptive literature with offers is not required and voluntarily submitted descriptive literature which qualifies the offer will require rejection of the offer.

However, within 5 days after award of contract, the contractor will submit to the contracting officer literature describing the equipment he/she intends to furnish and indicating strict compliance with the specification requirements.

The contracting officer will, by written notice to the contractor within 20 calendar days after receipt of the literature, approve, conditionally approve, or disapprove the equipment proposed to be furnished. The notice of approval or conditional approval will not relieve the contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval will state any further action required of the contractor. A notice of disapproval will cite reasons therefor.

If the equipment is disapproved by the Government, the contractor will be subject to action under the Default provision of this contract. However, prior to default action the contractor will be permitted a period (at least 10 days) under that clause to submit additional descriptive literature on equipment originally offered or descriptive literature on other equipment.

The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule necessitated by additional descriptive literature evaluations.

(End of Provision)

(b) The descriptive literature to be furnished by the contractor after award in accordance with paragraph (a) of this section is subject to the controls established in 870.112(b).

(c) The time of delivery or performance to be specified in the solicitation will include the time required for submission, receipt, the evaluation and approval required by 870.112(b) of this chapter, and return to the contractor of the descriptive literature.

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 796, Jan. 7, 1985]

852.210-75 Technical industry standards.

When items are required to conform to technical industry standards, such as those adopted by Underwriter's Laboratories, Incorporated; Factory Mutual Laboratories; American Gas Association; American Society Mechanical Engineers; National Electrical Manufacturers' Association; American Society Heating, Refrigeration and Air Conditioning Engineers; or similar organizations where such standards are generally recognized and accepted in the industry involved, the invitation for bids, request for proposals or request for quotations will so state. In no instance, where there is a multiple choice of laboratories, shall the invitation for bid, request for proposal or request for quotation indicate that the label or certificate of only one such laboratory is acceptable. The following provision will be used unless comparable provisions are contained in the item specification:

TECHNICAL INDUSTRY STANDARDS (APR 1984)

The supplies or equipment required by this invitation for bid or request for proposal must conform to the standards of the ——[3] and ——[3] as to ——.[4] The successful bidder or offeror will be required to submit proof that the item(s) he furnishes conforms to this requirement. This proof may be in the form of a label or seal affixed to the equipment or supplies, warranting that they have been tested in accordance with and conform to the specified standards. The seal or label of any nationally recognized laboratory such as those listed by the National Fire Protection Association, Boston, Massachusetts, in the current edition of their publication "Research on Fire," is acceptable. Proof may also be furnished in the form of a certificate from one of these laboratories certifying that the item(s) furnished have been tested in accordance with and conform to the specified standards.

(End of Provision)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 796, Jan. 7, 1985]

852.210-76 Noncompliance with packaging, packing, and/or marking requirements.

The following clause will be included in contracts for supplies for delivery to supply distribution warehouses or depots for storage and subsequent issue to a using activity. It may also be included when appropriate when delivery is direct to a using activity.

NONCOMPLIANCE WITH PACKAGING, PACKING AND/OR MARKING REQUIREMENTS (APR 1984)

Failure to comply with the packaging, packing, and/or marking requirements indicated herein, or incorporated herein by reference, may result in rejection of the merchandise and request for replacement or repackaging, repacking, and/or marking. The Government reserves the right, without obtaining authority from the contractor, to perform the required repackaging, repacking, and/or marking services and charge the contractor at the actual cost to the Government for the same or have the required repackaging, repacking, and/or marking services performed commercially under Government order charge the contractor at the invoice rate. In connection with any discount offered, time will be computed from the date of completion of such repackaging, repacking, and/or marking services.

(End of Clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 54 FR 30045, July 18, 1989]

852.210-77 Brand name or equal.

The brand name or equal clause when used as prescribed by 810.004 will be as follows:

BRAND NAME OR EQUAL (NOV 1984)

(NOTE: As used in this clause, the term "brand name" includes identification of products by make and model.)

(a) If items called for by this invitation for bids have been identified in the schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements listed in the invitation.

---

[3] Insert name(s) of organization(s), the standards of which are pertinent to the Government's needs.

[4] Insert pertinent standards, i.e. fire and casualty, safety and fire protection, etc.

(b) Unless the bidder clearly indicates in his bid that he is offering an "equal" product, his bid shall be considered as offering a brand name product referenced in the invitation for bids.

(c)(1) If the bidder proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the Invitation for Bids, or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder or identified in his/her bid as well as other information reasonably available to the purchasing activity. CAUTION TO BIDDERS. The purchasing activity is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the purchasing activity. Accordingly, to insure that sufficient information is available, the bidder must furnish as a part of his/her bid all descriptive material (such as cuts, illustration, drawings or other information) necessary for the purchasing activity to: (i) Determine whether the product offered meets the salient characteristics requirement of the Invitation for Bids, and (ii) establish exactly what the bidder proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the purchasing activity.

(2) If the bidder proposes to modify a product so as to make it conform to the requirements of the Invitation for Bids, he/she shall: (i) Include in his/her bid a clear description of such proposed modifications, and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after bid opening to make a product conform to a brand name product referenced in the Invitation for Bids will not be considered.

(End of Clause)

[50 FR 796, Jan. 7, 1985, as amended at 53 FR 7756, Mar. 10, 1988]

852.212-70 Liquidated damages.

As prescribed in 812.204 and 836.206, the contracting officer may insert the following clause when appropriate:

PARTIAL PERFORMANCE AND ACCEPTANCE (APR 1984)

If any unit of the work contracted for i accepted in advance of the whole, the rat of liquidated damages assessed will be in the ratio that the value of the unaccepted work bears to the total amount of the contract. I a separate price for unaccepted work ha not been stated in the contractor's bid, determination of the value thereof will be made from schedules of costs furnished by the contractor and approved by the contracting officer, as specified elsewhere in the contract.

(End of Clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

852.214-70 Caution to bidders—bid envelopes.

As provided in 814.201, the following provision will be prominently placed on all IFB's:

CAUTION TO BIDDERS—BID ENVELOPES (APR 1984)

It is the responsibility of each bidder to take all necessary precautions, including the use of a proper mailing cover, to insure that the bid price cannot be ascertained by anyone prior to bid opening. If a bid envelope is furnished with this invitation, the bidder is requested to use this envelope in submitting the bid. The bidder may, however, when it suits a purpose, use any suitable envelope, identified by the invitation number and bid opening time and date. If a bid envelope is not furnished, the bidder will complete and affix the enclosed Optional Form 17, Sealed Bid Label, to the lower left-hand corner of the envelope used in submitting the bid.

(End of Provision)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

852.214-71 Alternate items.

As prescribed in 814.201, consideration of alternate items may be appropriate. The following provisions may be used under the specified conditions:

(a) When an alternate item is to be considered only if no bids or insufficient bids are received on the item desired, the following will be included in the invitation:

ALTERNATE ITEM(S) (APR 1984)

Bids on ——[5] will be considered only if acceptable bids on ——[6] are not received or do not satisfy the total requirement.

(End of Provision)

(b) When an alternate item will be considered on an equal basis with the item specified, the following will be included in the invitation:

ALTERNATE ITEM(S) (APR 1984)

Bids ——[5] will be given equal consideration along with the ——[6] and any such bids received may be accepted if to the advantage of the Government. Tie bids will be decided in favor of.[6]

(End of Provision)

(c) In addition to the clause in paragraph (a) or (b) of this section, the following provision will be included in the invitation when bids will be allowed on different packaging, unit designation, etc.

ALTERNATE PACKAGING AND PACKING (APR 1984)

The bidder's offer must clearly indicate the quantity, package size, unit, or other different feature upon which the quote is made. Evaluation of the alternate or multiple alternates will be made on a common denominator such as per ounce, per pound, etc., basis.

(End of Provision)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 796, Jan. 7, 1985]

852.214-73 Bid samples.

As provided by and under the circumstances of 814.202-4, the following provision will be inserted in the IFB.

BID SAMPLES (APR 1984)

All samples furnished must be plainly marked with the complete lettering and numbering of the item or subitems to which it relates, the name of the commodity, the Invitation for Bids number, and the name of the bidder. Cases or packages containing samples must be plainly marked "Samples" and all charges incident to the preparation and transportation of samples must be prepaid by the bidder. Bids must not be enclosed with samples.

(End of Provision)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 796, Jan. 7, 1985]

852.216-70 Estimated quantities for requirements contracts.

(a) When definite quantities cannot be determined, solicitations for facility-level requirements contracts will contain the applicable clause as set forth below. Solicitations issued by the Marketing Center will contain provisions developed by that Center for particular application to its operations, subject to legal review as prescribed in 801.602-70(c)(1).

(b) The following clause will be used for general equipment, supplies and services:

ESTIMATED QUANTITIES (APR 1984)

As it is impossible to determine the exact quantities that will be required during the contract term, each bidder whose bid is accepted wholly or in part will be required to deliver all articles or services that may be ordered during the contract term, except as he/she otherwise indicates in his/her bid and except as otherwise provided herein. Bids will be considered if made with the proviso that the total quantities delivered shall not exceed a certain specified quantity. Bids offering less than 75 percent of the estimated requirement or which provide that the Government shall guarantee any definite quantity, will not be considered. The fact that quantities are estimated shall not relieve the contractor from filling all orders placed under this contract to the extent of his/her obligation. Also, the Department of Veterans Affairs shall not be relieved of its obligation to order from the contractor all articles or services that may, in the judgment of the ordering officer, be needed except that in the public exigency procurement may be made without regard to this contract.

(End of Clause)

(c) The following clause will be used in local coal-hauling contracts.

ESTIMATED QUANTITY

The estimated requirements shown in this invitation for bids cover the requirements for the entire contract period. It is understood and agreed that during the period of this contract the Government may order and the contractor will haul such coal as may, in the opinion of the Government, be required, except that in the public exigency procurement may be made without regard to this contract.

---

[5] Contracting officer will insert an alternate item that is considered acceptable.

[6] Contracting officer will insert the required item and item number.

(End of Clause)

(d) The following clause will be used for orthopedic, prosthetic, and optical supplies.

QUANTITIES

The supplies and/or services listed in the attached schedule will be furnished at such time and in such quantities as they are required.

(End of Clause)

(e) The following clause will be used for National Cemetery System contracts for monuments:

ESTIMATED QUANTITIES (JULY 1989)

As it is impossible to determine the exact quantities that will be required during the contract term, each bidder whose bid is accepted wholly or in part will be required to deliver all articles that may be ordered during the contract term, except as he or she otherwise indicates in his or her bid and except as otherwise provided herein. Bids will be considered if made with the proviso that the total quantities delivered shall not exceed a certain specified quantity. The fact that quantities are estimated shall not relieve the contractor from filling all orders placed under this contract to the extent of his or her obligation. Also, the Department of Veterans Affairs shall not be relieved of its obligation to order from the contractor all articles that may, in the judgment of the ordering officer, be needed except that in the public exigency procurement may be made without regard to this contract.

(End of clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 796, Jan. 7, 1985; 54 FR 30045, July 18, 1989]

852.219-70 Veteran-owned small business.

(a) As prescribed in 819.7003(a), the following certification will be made a part of all solicitations and all requests for quotations:

The offeror represents that the firm submitting this offer ( ) is ( ) is not, a Vietnam era veteran-owned small business and ( ) is ( ) is not, a disabled veteran-owned small business. A Vietnam era veteran-owned business or a disabled veteran-owned small business is defined as a small business, at least 51 percent of which is owned by such a veteran, who also controls and operate the business. Control in this context means exercising the power to make policy decisions. Operate in this context means actively involved in day-to-day management. For the purpose of this definition, eligible veterans include:

(1) Those who served for a period of more than 180 days, any part of which was between August 5, 1964, and May 7, 1975, and were discharged other than dishonorable.

(2) Disabled veterans of any era with a minimum compensable disability of 30 percent, or a veteran of any era who was discharged for disability.

(b) Failure to execute this representation will be deemed a minor informality and the bidder or offeror shall be permitted to satisfy the requirement prior to award (see FAR 14.405).

[50 FR 796, Jan 7, 1985; 54 FR 40065, Sept. 29, 1989]

852.222-70 Contract Work Hours and Safety Standards Act—nursing home care contract supplement.

As prescribed in 822.304, nursing home care contracts will include the following clause.

CONTRACT WORKHOURS AND SAFETY STANDARD ACT—NURSING HOME CARE CONTRACT SUPPLEMENT (APR 1984)

In the performance of any contract entered into pursuant to the provisions of 38 U.S.C. 620 to provide nursing home care of veterans, no contractor or subcontractor under such contract shall be deemed in violation of Section 102 of the Contract Work Hours and Safety Standards Act by virtue of failure to pay the overtime wages required by such section for work in excess of 8 hours in any calendar day or 40 hours in the workweek to any individual employed by establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of 14 consecutive days is accepted in lieu of the workweek of 7 consecutive days for the purpose of overtime compensation and if such individual receives compensation for employment in excess of 8 hours in any workday and in excess of 80 hours in such 14-day period at a rate not less than 1½ times the regular rate at which the individual is employed, computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended.

(End of Clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

852.228-70 Bond premium adjustment.

The following clause will be utilized as prescribed by 828.7000.

Bond Premium Adjustment (Apr 1984)

When net changes in original contract price affect the premium of a Corporate Surety Bond by $5 or more, the Government in determining basis for final settlement, will provide for bond premium adjustment computed at the rate shown in the bond.

(End of Clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

852.229-70 Purchases from patient's funds.

When contracts are for items to be purchased solely from personal funds of patients, the following tax provision will be used in lieu of the Federal, State and local tax clause in FAR 52.229-1.

Sales or Use Taxes (Apr 1984)

The articles listed in this bid invitation will be purchased from personal funds of patients and prices bid herein include any sales or use tax heretofore imposed by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, applicable to the material in this bid.

(End of Provision)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 796, Jan.7, 1985

852.229-71 Purchases for patients using Government funds and/or personal funds of patients.

When contracts are for items to be purchased from both Government funds and personal funds of patients, the following provision will be included as a part of the Federal, State, and local tax clause in FAR 52.229-1:

Sales or Use Taxes (Apr 1984)

Any article purchased from this contract, payable from personal funds of patients, will be subject to any applicable sales or use tax levied thereon by any State, or by duly constituted taxing authority therein having jurisdiction to levy such a tax; the total amount of the tax applicable to such purchase payable from personal funds of patients will be computed on the total amount of the order and will be shown as a separate item on the purchase order and invoice. The bidder shall identify the applicable taxes and rates in his/her bid.

(End of Provision)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 796, Jan. 7, 1985]

852.233-2 Service of protest.

As prescribed in 833.106, insert the following provisions in solicitations for other than small purchases:

Service of Protest (July 1985) (Deviation FAR 52.233-2)

A copy of any protest, as defined in FAR 33.101, that is filed with the General Accounting Office (GAO) or the General Services Administration Board of Contract Appeals (GSBCA), shall be served on the contracting officer ——* and the ——**. The copy of any such protest must be received in the offices designated above on the same day a protest is filed with the GSBCA, or within 1 day of filing a protest with the GAO.

(End of Provision).

**Insert the address of contracting office or refer to the number of the block on the standard Form 33 or 1442, etc., where the address of the contracting office is identified.*

***For all contracts, except those awarded by the Office of Facilities, insert the Deputy Assistant Secretary for Acquisition and Materiel Management (93B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.*

[51 FR 23072, June 25, 1986 and 52 FR 28559, July 31, 1987, as amended at 52 FR 28561, July 31, 1987; 54 FR 30044, July 18, 1989; 54 FR 40065, Sept. 29, 1989]

852.233-70 Protest content.

As prescribed in 833.106, insert the following provision in solicitations for other than small purchases:

Protest Content (June 1987)

(a) Any protest filed by an interested party shall:

(1) Include the name, address, and telephone number of the protester;

(2) Identify the solicitation and/or contract number;

(3) Include an original signed by the protester or his/her representative, and at least one copy;

(4) Set forth a detailed statement of the legal and factual ground of the protest including copies of relevant documents;

(5) Specifically request a ruling of the individual upon whom the protest is served; and

(6) State the form of relief requested.

(b) Failure to comply with the above may result in dismissal of the protest without further consideration.

(End of Provision)

[52 FR 28561, July 31, 1987, as amended at 52 FR 49017, Dec. 29, 1987]

852.236-70 Clauses and provisions for fixed-price construction contracts.

(a) The clauses and provisions prescribed in this section are set forth for use in fixed-price construction contracts in addition to those in FAR Subpart 52.2.

(b) Additional clauses and provisions not inconsistent with those in FAR Subparts 36.5 and 52.2 and those prescribed in this subpart are authorized when determined necessary or desirable by the contracting officer, and when approved as provided in Subpart 801.4.

(c) Clauses and provisions inconsistent with those contained in FAR Subpart 36.5 and 52.2 and this subpart, but considered essential to the procurement of Department of Veterans Affairs requirements, shall not be used unless the deviation procedure set forth in Subpart 801.4 has been complied with.

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 796, Jan. 7, 1985]

852.236-71 Specifications and drawings for construction.

The clause entitled "Specifications and Drawings for Construction," in FAR 52.236-21 is supplemented as follows:

SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (APR 1984)

(a) The contracting officer's interpretation of the drawings and specifications will be final, subject to the disputes clause.

(b) Large scale drawings supersede small scale drawings.

(c) Dimensions govern in all cases. Scaling of drawings may be done only for general location and general size of items.

(d) Dimensions shown of existing work and all dimensions required for work that is to connect with existing work, shall be verified by the contractor by actual measurement of the existing work. Any work at variance with that specified or shown in the drawings shall not be performed by the contractor until approved in writing by the contracting officer.

(End of Clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

852.236-72 Performance of work by the contractor.

The clause entitled "Performance of Work by the Contractor," in FAR 52.236-1, is supplemented as follows:

PERFORMANCE OF WORK BY THE CONTRACTOR (APR 1984)

(a) Contract work accomplished on the site by laborers, mechanics, and foremen/forewomen on the contractor's payroll and under his/her direct supervision shall be included in establishing the percent of work to be performed by the contractor. Cost of material and equipment installed by such labor may be included. The work by contractor's executive, supervisory and clerical forces shall be excluded in establishing compliance with the requirements of ths clause.

(b) The contractor shall submit, simultaneously with schedule of costs required by Payments under Fixed-Price Construction Contract provision of the General Conditions of these specifications, a statement designating the branch or branches of contract work to be performed with his/her forces. The approved schedule of costs will be used in determining value of a branch or branches, or portions therof, of the work for the purpose of this article.

(c) If, during the progress of work hereunder, the contractor requests a change in the branch or branches of the work to be performed by his/her forces and the contracting officer determines it to be in the best interests of the Government, the contracting officer may, at his/her discretion, authorize a change in such branch or branches of said work. Nothing contained herein shall permit a reduction in the percentage of work to be performed by the contractor with his/her forces, it being expressly understood that this is a contract requirement without right or privilege of reduction.

(d) In the event the contractor fails or refuses to meet the requirement of paragraph (a) of this clause, it is expressly agreed that the contract price will be reduced by 15 percent of the value of that portion of the percentage requirement which is accomplished by others. For the purposes of this clause, it is agreed that 15 percent is an acceptable estimate of the contractor's overhead and profit, or mark-up, on that portion of the work which the contractor fails or refuses to perform, with his/her own forces, in accordance with paragraph (a) of this clause

(End of Clause)

Alternate I (Jan. 1988)

For requirements which include Network Analysis System (NAS), substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

(b) The contractor shall submit, simultaneously with the cost per activity of the construction schedule required by Section 01311, NETWORK ANALYSIS SYSTEM, a responsibility code for all activities of the network for which the contractor's forces will perform the work. The cost of these activities will be used in determining the portions of the total contract work to be executed by the contractor's forces for the purpose of this article.

(c) If, during progress of work hereunder, the contractor requests a change in activities of work to be performed by contractor's forces and the contracting officer determines it to be in the best interest of the Government, the contracting officer may, at contracting officers' discretion, authorize a change in such activities of said work.

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 796, Jan. 7, 1985; 53 FR 1631, Jan. 21, 1988; 53 FR 2669, Jan. 29, 1988]

852.236–73 Bonds.

BONDS (NOV 1984)

For contracts in excess of $25,000, the contractor must furnish a Performance Bond (Standard Form 25) for 100 percent of the amount of the contract, and a Payment Bond (Standard Form 25-A) in the penal sums set forth below:

Amount of contract	Penal sum of bond
$25,000 to $1,000,000	Fifty (50) percent of the amount of the contract.
$1,000,001 to $5,000,000	Forty (40) percent of the amount of the contract.
$5,000,001 and over	$2,500,000.

When net changes in original contract price affect the premium of a Corporate Surety Bond by $5 or more, the Government in determining basis for final settlement, will provide for bond premium adjustment computed at the rate shown in the bond.

(End of Clause)

49 FR 12629, Mar. 29, 1984, as amended at 0 FR 794, 797, Jan. 7, 1985]

52.236–74 Inspection of construction.

The clause entitled, "Inspection of onstruction," in FAR 52.246-12, is upplemented as follows:

INSPECTION OF CONSTRUCTION (APR 1984)

(a) Inspection of materials and articles furnished under this contract will be made at the site by the resident engineer, unless otherwise provided for in the specifications.

(b) Final inspection will not be made until the contract work is ready for beneficial use or occupancy. The contractor shall notify the contracting officer, through the resident engineer, fifteen (15) days prior to the date on which the work will be ready for final inspection.

(End of Clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

852.236–75 Guaranty.

GUARANTY (APR 1984)

(a) Unless otherwise specifically provided for in the contract or specifications, the contractor, notwithstanding any final inspection, acceptance or payment, guarantees that all work performed and materials and equipment furnished under this contract are in accordance with the contract requirements. The contractor also guarantees that when installed all materials and equipment will be free from defects and will remain so for a period of at least one year from the date of acceptance by the Government.

(b) If defects of any kind should develop during the period such guarantees are in force, the contracting officer shall immediately notify the contractor in writing of such defects. The Government thereupon shall have the right, by a written notice to that effect, to require the contractor to repair or replace all inferior or defective work, material, or equipment or permit it to remain in place and assess the contractor the costs he/she (the contractor) would have incurred had he/she been required to effect repair or replacement.

(c) Any correction or replacement of parts, materials, equipment, supplies or construction made pursuant to the provisions of this clause shall also be subject to the provisions of this clause to the same extent as parts, materials, equipment, supplies or construction originally installed. The warranty with respect to such new or corrected parts, materials, equipment, supplies or construction shall be equal in duration as that set forth in (a) above and shall run from the date that such parts, materials, equipment, supplies or construction are replaced or corrected and accepted by the Government.

(d) The contractor guarantees to reimburse the Government for, or to repair or replace, any damages to the site, buildings, or contents thereof that are caused by inferior or defective workmanship, or the use of inferior or defective materials or equipment in the performance of this contract. The contracting officer shall immediately notify the contractor in writing when such damage occurs. The Government shall have the right to require the contractor to repair or replace such damaged areas or equipment, or elect to permit such damage to remain as is and assess the contractor the costs he/she would have incurred had he/she been required to effect repair or replacement.

(e) Should the contractor fail to proceed promptly, after notification by the contracting officer, to repair or replace any inferior or defective work, material, or equipment, or damage to the site, buildings, or contents, thereof, caused by inferior or defective work, or the use of inferior or defective materials, or equipment, the Government may have such work, material, equipment or damage repaired or replaced and charge all costs incident thereto to the contractor.

(f) Any special guaranties that may be required under the contract, shall be subject to the elections set forth above unless otherwise provided in such special guaranties.

(g) The decision of the contracting officer as to liability of the contractor under this clause is subject to the appeal procedures provided for in the disputes clause of this contract.

(End of Clause)

Supplement I (Jan. 1988)

If the specifications include guarantee period services, add the following paragraph (g) and redesignate paragraph (g) in the basic text as paragraph (h).

(g) Should the contractor fail to prosecute the work or fail to proceed promptly to provide guarantee period services after notification by the contracting officer, the Government may, subject to the default clause contained at FAR section 52.249-10, Default (Fixed-Price Construction), and after allowing the contractor 10 days to correct and comply with the contract, terminate the right to proceed with the work (or the separable part of the work) that has been delayed or unsatisfactorily performed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliance, and plant on the work site necessary for completing the work. The contractor and its sureties shall be liable for any damages to the Government resulting from the contractor's refusal or failure to complete the work within this specified time, whether or not the contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 53 FR 1631, Jan. 21, 1988; 53 FR 2669, Jan. 29, 1988]

852.236-76 Correspondence.

CORRESPONDENCE (APR 1984)

All correspondence relative to this contract shall bear Specification Number, Project Number, Department of Veterans Affairs Contract Number, title of project and name of facility.

(End of Clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 54 FR 40066, Sept. 29, 1989]

852.236-77 Reference to "standards."

STANDARDS (APR 1984)

Any materials, equipment, or workmanship specified by references to number, symbol, or title of any specific Federal, Industry or Government Agency Standard Specification shall comply with all applicable provisions of such standard specifications, except as limited to type, class or grade, or modified in contract specifications. Reference to "Standards" referred to in the contract specifications, except as modified, shall have full force and effect as though printed in detail in specifications.

(End of Clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 797, Jan. 7, 1985]

852.236-78 Government supervision.

GOVERNMENT SUPERVISION (APR 1984)

(a) The work will be under the direction of the Department of Veterans Affairs contracting officer, who may designate another VA employee to act as resident engineer at the construction site.

(b) Except as provided below, the resident engineer's directions will not conflict with or change contract requirements.

(c) Within the limits of any specific authority delegated by the contracting officer, the resident engineer may by written direction make changes in the work. The contractor shall be advised of the extent of such authority prior to execution of any work under the contract.

(End of Clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

852.236-79 Daily report of workers and materials.

DAILY REPORT OF WORKERS AND MATERIAL (APR 1984)

The contractor shall furnish to the resident engineer each day a consolidated report for the preceding work day in which is shown the number of laborers, mechanics, foremen/forewomen and pieces of heavy equipment used or employed by the contractor and subcontractors. The report shall bear the name of the firm, the branch of work which they perform such as concrete, plastering, masonry, plumbing, sheet metal work, etc. The report shall give a breakdown of employees by crafts, location where employed, and work performed. The report shall also list materials delivered to the site on the date covered by the report.

(End of Clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

852.236-80 Subcontracts and work coordination.

The following clause is for use except as provided in 852.236-81:

SUBCONTRACTS AND WORK COORDINATION (APR 1984)

(a) Nothing contained in this contract shall be construed as creating any contractual relationship between any subcontractor and the Government. Divisions or sections of specifications are not intended to control the contractor in dividing work among subcontractors, or to limit work performed by any trade.

(b) The contractor shall be responsible to the Government for acts and omissions of his/her own employees, and of the subcontractors and their employees. The contractor shall also be responsible for coordination of the work of the trades, subcontractors, and material suppliers.

(c) The Government or its representatives will not undertake to settle any differences between the contractor and subcontractors or between subcontractors.

(d) The Government reserves the right to refuse to permit employment on the work or require dismissal from the work of any subcontractor who, by reason of previous unsatisfactory work on Department of Veterans Affairs projects or for any other reason, is considered by the contracting officer to be incompetent or otherwise objectionable.

(End of Clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

852.236-81 Work coordination (alternate provision).

For new construction work with complex mechanical-electrical work, the following clause relating to work coordination may be substituted for paragraph (b) of the clause set forth in 852.236-80:

WORK COORDINATION (APR 1984)

The contractor shall be responsible to the Government for acts and omissions of his/her own employees, and subcontractors and their employees. The contractor shall also be responsible for coordination of the work of the trades, subcontractors, and material suppliers. The contractor shall, in advance of the work, prepare coordination drawings showing the location of openings through slabs, the pipe sleeves and hanger inserts, as well as the location and elevation of utility lines, including, but not limited to, conveyor systems, pneumatic tubes, ducts, and conduits and pipes 2 inches and larger in diameter. These drawings, including plans, elevations, and sections as appropriate shall clearly show the manner in which the utilities fit into the available space and relate to each other and to existing building elements. Drawings shall be of appropriate scale to satisfy the previously stated purposes, but not smaller than ¼-inch scale. Drawings may be composite (with distinctive colors for the various trades) or may be separate but fully coordinated drawings (such as sepias or photographic paper reproducibles) of the same scale. Separate drawings shall depict identical building areas or sections and shall be capable of being overlaid in any combination. The submitted drawings for a given area of the project shall show the work of all trades which will be involved in that particular area. Six complete composite drawings or six complete sets of separate reproducible drawings shall be received by the Government not less than 20 days prior to the scheduled start of the work in the area illustrated by the drawings, for the purpose of showing the contractor's planned methods of installation. The objectives of such drawings are to promote carefully planned work sequence and proper trade coordination, in order to assure the expeditious solutions of problems and the installation of lines and equipment as contemplated by the contract documents while avoiding or minimizing additional costs to the contractor and to the Government. In the event the contractor, in coordinating the various installations and in planning the method of installation, finds a conflict in location or elevation of any of the utilities with themselves, with structural items or with other construction items, he/

she shall bring this conflict to the attention of the contracting officer immediately. In doing so, the contractor shall explain the proposed method of solving the problem or shall request instructions as to how to proceed if adjustments beyond those of usual trades coordination are necessary. Utilities installation work will not proceed in any area prior to the submission and completion of the Government review of the coordinated drawings for that area, nor in any area in which conflicts are disclosed by the coordination drawings until the conflicts have been corrected to the satisfaction of the contracting officer. It is the responsibility of the contractor to submit the required drawings in a timely manner consistent with the requirements to complete the work covered by this contract within the prescribed contract time.

(End of Clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 797, Jan. 7, 1985; 53 FR 1632, Jan. 21, 1988]

852.236-82 Payments under fixed-price construction contracts (without NAS).

For contracts that do not contain a section entitled "Network Analysis System (NAS)," the clause entitled "Payments under Fixed-Price Construction Contracts" in FAR 52.232-5 will be supplemented as follows:

PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (APR 1984)

The clause entitled "Payments Under Fixed-Price Construction Contracts" in FAR 52.232-5 is implemented as follows:

(a) Retainage:

(1) The contracting officer may retain funds:

(i) Where performance under the contract has been determined to be deficient or the contractor has performed in an unsatisfactory manner in the past; or

(ii) As the contract nears completion, to ensure that deficiencies will be corrected and that completion is timely.

(2) Examples of deficient performance justifying a retention of funds include, but are not restricted to, the following:

(i) Unsatisfactory progress as determined by the contracting officer;

(ii) Failure to meet schedule in Schedule of Work Progress;

(iii) Failure to present submittals in a timely manner; or

(iv) Failure to comply in good faith with approved subcontracting plans, certifications or contract requirements.

(3) Any level of retention shall not exceed 10 percent either where there is determined to be unsatisfactory performance, or when the retainage is to ensure satisfactory completion. Retained amounts shall be paid promptly upon completion of all contract requirements, but nothing contained in this subparagraph shall be construed as limiting the contracting officer's right to withhold funds under other provisions of the contract or in accordance with the general law and regulations regarding the administration of Government contracts.

(b) The contractor shall submit a schedule of cost to the contracting officer for approval within 30 calendar days after date of receipt of notice to proceed. Such schedule will be signed and submitted in triplicate. The approved cost schedule will be one of the bases for determining progress payments to the contractor for work completed. This schedule shall show cost by the branches of work for each building or unit of the contract, as instructed by the resident engineer.

(1) The branches shall be subdivided into as many subbranches as are necessary to cover all component parts of the contract work.

(2) Costs as shown on this schedule must be true costs and, should the resident engineer so desire he/she may require the contractor to submit the original estimate sheets or other information to substantiate detailed makeup of schedule.

(3) The sum of subbranches, as applied to each branch, shall equal the total cost of such branch. The total costs of all branches shall equal the contract price.

(4) Insurance and similar items shall be prorated and included in the cost of each branch of the work.

(5) The cost schedule shall include separate cost information for the systems listed below. The percentages listed below are proportions of the cost listed in contractor's cost schedule and identify, for payment purposes, the value of the work to adjust, correct and test systems after the material has been installed. Payment of the listed percentages will be made only after the contractor has demonstrated that each of the systems is substantially complete and operates as required by the contract.

VALUE OF ADJUSTING, CORRECTING, AND TESTING SYSTEM

System	Percent
Pneumatic tube system	10
Incinerators (medical waste and trash)	5
Sewage treatment plant equipment	5
Water treatment plant equipment	5
Washers (dish, cage, glass, etc.)	5
Sterilizing equipment	5
Water distilling equipment	5
Prefab temperature rooms (cold, constant temperature)	5

VALUE OF ADJUSTING, CORRECTING, AND TESTING SYSTEM—Continued

System	Percent
Entire air-conditioning system (Specified under 600 Sections)	5
Entire boiler plant system (Specified under 700 Sections)	5
General supply conveyors	10
Food service conveyors	10
Pneumatic soiled linen and trash system	10
Elevators and dumbwaiters	10
Materials transport system	10
Engine-generator system	5
Primary switchgear	5
Secondary switchgear	5
Fire alarm system	5
Nurse call system	5
Intercom system	5
Radio system	5
TV (entertainment) system	5

(c) In addition to this cost schedule, the contractor shall submit such unit costs as may be specifically requested. The unit costs shall be those used by the contractor in preparing his/her bid and will not be binding as pertaining to any contract changes.

(d) The contracting officer will consider for monthly progress payments material and/or equipment procured by the contractor and stored on the construction site as space is available, or at a local approved location off the site, under such terms and conditions as such officer approves, including but not limited to the following:

(1) The material or equipment is in accordance with the contract requirements and/or approved samples and shop drawings.

(2) Only those materials and/or equipment as are approved by the resident engineer for storage will be included.

(3) Such materials and/or equipment will be stored separately and will be readily available for inspection and inventory by the resident engineer.

(4) Such materials and/or equipment will be protected against weather, theft and other hazards and will not be subjected to deterioration.

(5) All of the other terms, provisions, conditions and covenants contained in the contract shall be and remain in full force and effect as therein provided.

(6) A supplemental agreement will be executed between the Government and the contractor with the consent of the contractor's surety for off-site storage.

(e) The contractor, prior to receiving a progress or final payment under this contract, shall submit to the contracting officer a certification that the contractor has made payment from proceeds of prior payments, or that timely payment will be made from the proceeds of the progress or final payment then due, to subcontractors and suppliers in accordance with the contractual arrangements with them.

(f) The Government reserves the right to withhold payment until samples, shop drawings, engineer's certificates, additional bonds, payrolls, weekly statements of compliance, proof of title, nondiscrimination compliance reports, or any other things required by this contract, have been submitted to the satisfaction of the contracting officer.

(End of Clause)

Supplement I (Jan. 1988)

If the specifications include guarantee period services, include the following paragraphs (6) (i) and (ii) as an addition to the basic clause in paragraph (b):

(6)(i) The contractor shall at the time of contract award furnish the total cost of the guarantee period services in accordance with specification section(s) covering guarantee period services. The contractor shall submit, within 15 calendar days of notice to proceed, the guarantee period performance program which shall include an itemized accounting of the number of workhours required to perform the guarantee period service on each piece of equipment. The contractor shall also submit the estimated costs including employee fringe benefits and what the contractor reasonably expects to pay over the guarantee period service, all of which will be subject to the contracting officer's approval.

(ii) The cost of the guarantee service shall be prorated on an annual basis and paid in equal monthly payments by VA during the period of guarantee. In the event the installer does not perform satisfactorily during this period, all payments may be withheld, and the contracting officer shall inform the contractor of the unsatisfactory performance, allowing the contractor 10 days to correct deficiencies and comply with the contract. The guarantee period service is subject to those provisions as set forth in the Payment and Default clauses.

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 797, Jan. 7, 1985; 53 FR 1632, Jan. 21, 1988; 54 FR 40066, Sept. 29, 1989]

852.236-83 Payments under fixed-price construction contracts (including NAS).

For contracts that contain a section entitled "Network Analysis System (NAS)," the clause entitled "Payments under Fixed-Price Construction Contracts" in FAR 52.232-5 is supplemented as follows:

best copy available

pages tightly bound

PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (APR 1984)

The clause entitled "Payments under Fixed-Price Construction Contracts in FAR 52.232-5 is implemented as follows:

(a) Retainage:

(1) The contracting officer may retain funds:

(i) Where performance under the contract has been determined to be deficient or the contractor has performed in an unsatisfactory manner in the past; or

(ii) As the contract nears completion, to ensure that deficiencies will be corrected and that completion is timely.

(2) Examples of deficient performance justifying a retention of funds include, but are not restricted to, the following:

(i) Unsatisfactory progress as determined by the contracting officer;

(ii) Failure either to meet schedules in Section Network Analysis System (NAS), or to process the Interim Arrow Diagram/Complete Project Arrow Diagram;

(iii) Failure to present submittals in a timely manner; or

(iv) Failure to comply in good faith with approved subcontracting plans, certifications or contract requirements.

(3) Any level of retention shall not exceed 10 percent either where there is determined to be unsatisfactory performance, or when the retainage is to ensure satisfactory completion. Retained amounts shall be paid promptly upon completion of all contract requirements, but nothing contained in this subparagraph shall be construed as limiting the contracting officer's right to withhold funds under other provisions of the contract or in accordance with the general law and regulations regarding the administration of Government contracts.

(b) The contractor shall submit a schedule of costs in accordance with the requirements of Section Network Analysis System (NAS) to the contracting officer for approval within 90 calendar days after date of receipt of notice to proceed. The approved cost schedule will be one of the bases for determining progress payments to the contractor for work completed.

(1) Costs as shown on this schedule must be true costs and, should the resident engineer so desire, he/she may require the contractor to submit his/her original estimate sheets or other information to substantiate the detailed makeup of the cost schedule.

(2) The total costs of all activities shall equal the contract price.

(3) Insurance and similar items shall be prorated and included in each activity cost of the critical path method (CPM) network.

(4) The CPM network shall include a separate cost loaded activity for adjusting and testing of the systems listed below. The percentages listed below will be used to determine the cost of adjust and test activities and identify, for payment purposes, the value of the work to adjust, correct and test systems after the material has been installed.

(5) Payment for adjust and test activities will be made only after the contractor has demonstrated that each of the systems is substantially complete and operates as required by the contract.

VALUES OF ADJUSTING CORRECTING, AND TESTING SYSTEM

System	Percent
Pneumatic tube system	10
Incinerators (medical waste and trash)	5
Sewage treatment plant equipment	5
Water treatment plant equipment	5
Washers (dish, cage, glass, etc.)	5
Sterilizing equipment	5
Water distiling equipment	5
Prefab temperature rooms (cold, constant temperature)	5
Entire air-conditioning system (Specified under 600 Sections)	5
Entire boiler plant system (specified under 700 Sections)	5
General supply conveyors	10
Food service conveyors	10
Pneumatic soiled linen and trash system	10
Elevators and dumbwaiters	10
Materials transport system	10
Engine-generator system	5
Primary switchgear	5
Secondary switchgear	5
Secondary switchgear	5
Fire alarm system	5
Nurse call system	5
Intercom system	5
Radio system	5
TV (entertainment) system	5

(c) In addition to this cost schedule, the contractor shall submit such unit costs as may be specifically requested. The unit costs shall be those used by the contractor in preparing the bid and will not be binding as pertaining to any contract changes.

(d) The contracting officer will consider for monthly progress payments material and/or equipment procured by the contractor and stored on the construction site as space is available, or at a local approved location off the site, under such terms and conditions as such officer approves, including but not limited to the following:

(1) The material or equipment is in accordance with the contract requirements and/or approved samples and shop drawings.

(2) Only those materials and/or equipment as are approved by the resident engineer for storage will be included.

(3) Such materials and/or equipment will be stored separately and will be readily

available for inspection and inventory by the resident engineer.

(4) Such materials and/or equipment will be protected against weather, theft and other hazards and will not be subjected to deterioration.

(5) All of the other terms, provisions, conditions and covenants contained in the contract shall be and remain in full force and effect as therein provided.

(6) A supplemental agreement will be executed between the Government and the contractor with the consent of the contractor's surety for off-site storage.

(e) The contractor, prior to receiving a progress or final payment under this contract, shall submit to the contracting officer a certification that the contractor has made payment from proceeds of prior payments, or that timely payment will be made from the proceeds of the progress or final payment then due, to subcontractors and suppliers in accordance with the contractual arrangements with them.

(f) The Government reserves the right to withhold payment until samples, shop drawings, engineer's certificates, additional bonds, payrolls, weekly statements of compliance, proof of title, nondiscrimination compliance reports, or any other things required by this contract, have been submitted to the satisfaction of the contracting officer.

(End of Clause)

SUPPLEMENT I (Jan. 1988)

If the specifications include guarantee period services, include the following paragraphs (6) (i), (ii), and (iii) as an addition to the basic clause in paragraph (b):

(6)(i) The contractor shall show on the critical path method (CPM) network the total cost of the guarantee period services in accordance with the guarantee period service section(s) of the specifications. This cost shall be priced out when submitting the CPM cost loaded network. The cost submitted shall be subject to the approval of the contracting officer. The activity on the CPM shall have money only and not activity time.

(ii) The contractor shall submit with the CPM a guarantee period performance program which shall include an itemized accounting of the number of workhours required to perform the guarantee period service on each piece of equipment. The contractor shall also submit the established costs including employee fringe benefits and what the contractor reasonably expects to pay over the guarantee period service, all of which will be subject to the contracting officer's approval.

(iii) The cost of the guarantee period service shall be prorated on an annual basis and paid in equal monthly payments by VA during the period of guarantee. In the event the installer does not perform satisfactorily during this period, all payments may be withheld and the contracting officer shall inform the contractor of the unsatisfactory performance allowing the contractor 10 days to correct and comply with the contract. The guarantee period service is subject to those provisions as set forth in the Payment and Default clauses.

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 797, Jan. 7, 1985; 53 FR 1632, Jan. 21, 1988; 54 FR 40066, Sept. 29, 1989]

852.236-84 Schedule of work progress.

This clause is to be used on projects which do not include a section entitled "Network Analysis System (NAS)." The cost-loaded activity network serves the same general purpose as the schedule of work progress.

SCHEDULE OF WORK PROGRESS (Nov 1984)

(a) The contractor shall submit with the schedule of costs, a progress schedule that indicates the anticipated installation of work versus the elapsed contract time, for the approval of the contracting officer. The progress schedule time shall be represented in the form of a bar graph with the contract time plotted along the horizontal axis. The starting date of the schedule shall be the date the contractor receives the "Notice to Proceed." The ending date shall be the original contract completion date. At a minimum, both dates shall be indicated on the progress schedule. The specific item of work, i.e., "Excavation", "Floor Tile", "Finish Carpentry", etc., should be plotted along the vertical axis and indicated by a line or bar at which time(s) during the contract this work is scheduled to take place. The schedule shall be submitted in triplicate and signed by the contractor.

(b) The actual percent completion will be based on the value of installed work divided by the current contract amount. The actual completion percentage will be indicated on the monthly progress report.

(c) The progress schedule will be revised when individual or cumulative time extensions of 15 calendar days or more are granted for any reason. The revised schedule should indicate the new contract completion date and should reflect any changes to the installation time(s) of the items of work affected.

(d) The revised progress schedule will be used for reporting future scheduled percentage completion.

(End of Clause)

[50 FR 794, 797, Jan. 7, 1985, as amended at 53 FR 1632, Jan. 21, 1988]

852.236-85 Supplementary labor standards provisions.

Supplementary Labor Standards Provisions (Apr 1984)

(a) The wage determination decision of the Secretary of Labor is set forth in section GR, General Requirements, of this contract. It is the result of a study of wage conditions in the locality and establishes the minimum hourly rates of wages and fringe benefits for the described classes of labor in accordance with applicable law. No increase in the contract price will be allowed or authorized because of payment of wage rates in excess of those listed.

(b) The contractor shall submit the required copies of payrolls to the contracting officer through the resident engineer or engineer officer, when acting in that capacity. Department of Labor Form WH-347, Payroll, available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, may be used for this purpose. If, however, the contractor or subcontractor elects to use an individually composed payroll form, it shall contain the same information shown on Form WH-347, and in addition be accompanied by Department of Labor Form WH-348, Statement of Compliance, or any other form containing the exact wording of this form.

(End of Clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

852.236-86 Workmen's compensation.

Workmen's Compensation (Apr 1984)

The Act of June 25, 1936, 49 Stat. 1938 (40 U.S.C. 290) authorizes the constituted authority of the several states to apply their workmen's compensation laws to all lands and premises owned or held by the United States.

(End of Clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

852.236-87 Safety requirements.

The following clause is included to designate the VA Safety Officer and his/her responsibilities:

Accident Prevention (Apr 1984)

(a) The resident engineer on all assigned construction projects is designated as the VA Safety Officer, and as such is responsible for enforcing all safety regulations as they apply to the safety of Department of Veterans Affairs employees, visitors, and patients. Regular safety inspections are conducted by the resident engineer weekly, and all noted violations of safety and health regulations will be brought to the attention of the contractor who will take immediate action to correct such violations. If corrective action is not taken promptly, a copy of the resident engineer's report will be forwarded to the Department of Labor.

(b) "Safety and Health Regulations for Construction," may be obtained from any regional office of the Occupational Safety and Health Administration, Department of Labor.

(End of Clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

852.236-88 Contract changes.

The clauses, entitled "Changes" in FAR 52.243-4 and "Differing Site Conditions" in FAR 52.236-2 will be supplemented with the following two clauses. Both clauses shall be included in the contract.The clause in paragraph (a) of this section will apply to negotiated changes exceeding $500,000 and does not provide ceiling rates for indirect expenses. Such expenses will be included as part of the submission of certified cost and pricing data, will be negotiated by the contracting officer and will be audited in accordance with 815.505-5. When the negotiated change will be less than $500,000 the clause specified in paragraph (b) of this section will apply. Proposals over $100,000 and not exceeding $500,000 shall be accompanied by certificates of current cost or pricing data. If cost and pricing data are required for proposals of $100,000 or less, the contracting officer may require that it be certified in accordance with FAR 15.804-2(a)(2). It must be emphasized that the indirect cost rates are ceiling rates only, and the contracting officer will negotiate the indirect expense rates within the ceiling limitations. The clauses are a result of an approved FAR deviation pursuant to Subpart 801.4.

(a) Applicable to changes costing over $500,000:

CHANGES—SUPPLEMENT (FOR CHANGES COSTING OVER $500,000) (JUNE 1987)

The clauses entitled "Changes" in FAR 52.243-4 and "Differing Site Conditions" in FAR 52.236-2 are supplemented as follows:

(a) When requested by the contracting officer, the contractor shall submit proposals for changes in work to the resident engineer. Proposals, to be submitted within 30 calendar days after receipt of request, shall be in legible form, original and two copies, with an itemized breakdown that will include material, quantities, unit prices, labor costs (separated into trades), construction equipment, etc. (Labor costs are to be identified with specific material placed or operation performed.) The contractor must obtain and furnish with a proposal an itemized breakdown as described above, signed by each subcontractor participating in the change regardless of tier. When certified cost or pricing data are required under FAR Subpart 15.804, the cost of pricing data shall be submitted on Standard Form 1411 (SF 1411), Contract Pricing Proposal Cover Sheet, in accordance with FAR 15,804-6.

(b) When the necessity to proceed with a change does not allow sufficient time to negotiate a modification or because of failure to reach an agreement, the contracting officer may issue a change order instructing the contractor to proceed on the basis of a tentative price based on the best estimate available at the time, with the firm price to be determined later. Furthermore, when the change order is issued, the contractor shall submit a proposal for cost of changes in work within 30 calendar days.

(c) The contracting officer will consider issuing a settlement by determination to the contract, if the contractor's proposal required by paragraphs (a) and (b) of this clause is not received within 30 calendar days, or if agreement has not been reached.

(d) Bond premium adjustment, consequent upon changes ordered, will be made as elsewhere specified at the time of final settlement under the contract and will not be included in the individual change.

(End of Clause)

(b) Applicable to changes costing $500,000 or less:

CHANGES—SUPPLEMENT (FOR CHANGES COSTING $500,000 OR LESS) (JUNE 1987)

The clauses entitled "Changes" in FAR 52.243-4 and "Differing Site Conditions" in FAR 52.236-2 are supplemented as follows:

(a) When requested by the contracting officer, the contractor shall submit proposals for changes in work to the resident engineer. Proposals, to be submitted within 30 calendar days after receipt of request, shall be in legible form, original and two copies, with an itemized breakdown that will include material, quantities, unit prices, labor costs (separated into trades), construction equipment, etc. (Labor costs are to be identified with specific material placed or operation performed.) The contractor must obtain and furnish with a proposal an intemized breakdown as described above, signed by each subcontractor participating in the change regardless of tier. When certified cost or pricing data are required under FAR 15.804 for proposals over $100,000, the cost of pricing data shall be submitted on SF 1411, Contract Pricing Proposal Cover Sheet, in accordance with FAR 15,804-6. No itemized breakdown will be required for proposals amounting to less than $1,000.

(b) When the necessity to proceed with a change does not allow sufficient time to negotiate a modification or because of failure to reach an agreement, the contracting officer may issue a change order instructing the contractor to proceed on the basis of a tentative price based on the best estimate available at the time, with the firm price to be determined later. Furthermore, when the change order is issued, the contractor shall submit a proposal for cost of changes in work within 30 calendar days.

(c) The contracting officer will consider issuing a settlement by determination to the contract, if the contractor's proposal required by paragraphs (a) and (b) of this clause is not received within 30 calendar days, or if agreement has not been reached.

(d) Allowances not to exceed 10 percent each for overhead and profit for the party performing the work will be based on the value of labor, material, and use of construction equipment required to accomplish the change. As the value of the change increases, a declining scale will be used in negotiating the percentage of overhead and profit. Allowable percentages on changes will not exceed the following: 10 percent overhead and 10 percent profit on the first $20,000; 7½ percent overhead and 7½ percent profit on the next $30,000; 5 percent overhead and 5 percent profit on balance over $50,000. Profit shall be computed by multiplying the profit percentage by the sum of the direct costs and computed overhead costs.

(e) The prime contractor's or upper-tier subcontractor's fee on work performed by lower-tier subcontractors will be based on the net increased cost to the prime contractor or upper-tier subcontractor, as applicable. Allowable fee on changes will not exceed the following: 10 percent fee on the first $20,000; 7½ percent fee on the next $30,000; and 5 percent fee on balance over $50,000.

(f) Not more than four percentages, none of which exceed the percentages shown above, will be allowed regardless of the number of tiers of subcontractors.

(g) Where the contractor's or subcontractors' portion of a change involves credit items, such items must be deducted prior to adding overhead and profit for the party performing the work. The contractor's fee is limited to the net increase to contractor of subcontractors' portions cost computed in accordance herewith.

(h) Where a change involves credit items only, a proper measure of the amount of downward adjustment in the contract price is the reasonable cost to the contractor if he/she had performed the deleted work. A reasonable allowance for overhead and profit are properly includable as part of the downward adjustment for a deductive change. The amount of such allowance is subject to negotiation.

(i) Cost of Federal Old Age Benefit (Social Security) tax and of Workmen's Compensation and Public Liability insurance appertaining to changes are allowable. While no percentage will be allowed thereon for overhead or profit, prime contractor's fee will be allowed on such items in subcontractor's proposals.

(j) Overhead and contractor's fee percentages shall be considered to include insurance other than mentioned herein, field and office supervisors and assistants, security police, use of small tools, incidental job burdens, and general home office expenses and no separate allowance will be made therefor. Assistants to office supervisors include all clerical, stenographic and general office help. Incidental job burdens include, but are not necessarily limited to, office equipment and supplies, temporary toilets, telephone and conformance to OSHA requirements. Items such as, but not necessarily limited to, review and coordination, estimating and expediting relative to contract changes are associated with field and office supervision and are considered to be included in the contractor's overhead and/or fee percentage.

(k) Bond premium adjustment, consequent upon changes ordered, will be made as elsewhere specified at the time of final settlement under the contract and will not be included in the individual change.

(End of Clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 797, Jan. 7, 1985; 51 FR 23073, June 25, 1986; 52 FR 28559, 28561, July 31, 1987; 52 FR 32013, Aug. 25, 1987; 52 FR 49017, Dec. 29, 1987; 53 FR 1632, Jan. 21, 1988]

852.236-89 Buy American Act.

The Buy American Act (41 U.S.C. 10a-d) requires that only domestic construction material shall be used in the performance of contracts for construction. To clarify VA's position on foreign material, the following "Special Notice" will be inserted into the bid package, in front of SF 20, Invitation for Bids:

BUY AMERICAN ACT (NOV 1984)

(a) Reference is made to the clause entitled "Buy American Construction Materials," FAR 52.225-5.

(b) Notwithstanding a bidder's right to offer identifiable foreign material in its bid pursuant to the above provisions, VA does not anticipate accepting an offer that includes foreign items.

(c) If a bidder chooses to submit a bid which includes foreign materials, that bidder must provide a listing of the specific foreign materials he/she intends to use and a price for said materials. Because VA has a strong preference for domestic items, bidders are strongly urged to include bid prices for comparable domestic construction material. If VA determines not to accept foreign items and no comparable domestic items are provided the entire bid will be rejected.

(d) Any foreign item proposed after award will be rejected unless the bidder proves to VA's satisfaction: (1) it was impossible to request the exemption prior to award, and (2) said domestic construction material is no longer available, or (3) where the price has escalated so dramatically after the contract has been awarded that it would be unconscionable to require performance at that price. The determinations require by (1), (2) or (3) of this paragraph shall be at the sole discretion of the Secretary of Veterans Affairs.

(e) By signing this bid, the bidder declares that all articles, materials and supplies for use on the project shall be domestic unless specifically set forth on the Bid Form or addendum thereto.

(End of Clause)

[50 FR 798, Jan. 7, 1985, as amended at 54 FR 40066, Sept. 29, 1989]

852.236-90 Restriction on submission and use of equal products.

As prescribed in 836.202(c), the following clause shall be included in the solicitation if it is determined that only one product will meet the Government's minimum needs and the Department of Veterans Affairs will not allow the submission of "equal" products:

RESTRICTION ON SUBMISSION AND USE OF EQUAL PRODUCTS (NOV 1986)

This clause applies to the following items:

Notwithstanding the "Material and Workmanship" clause of this contract, FAR 52.236-5(a), nor any other contractual provision, "equal" products will not be considered by the Department of Veterans Affairs and may not be used.

(End of clause)

[52 FR 282, Jan. 5, 1987, as amended at 53 FR 7756, Mar. 10, 1988]

852.236-91 Special notes.

SPECIAL NOTES (JAN. 1988)

(a) Signing of the bid shall be deemed to be a certification by the bidder that:

(1) Bidder is a construction contractor who owns, operates, or maintains a place of business, regularly engaged in construction, alteration or repair of buildings, structures, communication facilities, or other engineering projects, including furnishing and installing of necessary equipment; or

(2) If newly entering into a construction activity, bidder has made all necessary arrangements for personnel, construction equipment, and required licenses to perform construction work; and

(3) Upon request, prior to award, bidder will promptly furnish to the Government a statement of facts in detail as to bidder's previous experience (including recent and current contracts), organization (including company officers), technical qualifications, financial resources and facilities available to perform the contemplated work.

(b) Unless otherwise provided in this contract, where the use of optional materials or construction is permitted the same standard of workmanship, fabrication and installation shall be required irrespective of which option is selected. The contractor shall make any change or adjustment in connecting work or otherwise necessitated by the use of such optional material or construction, without additional cost to the Government.

(c) When approval is given for a system component having functional or physical characteristics different from those indicated or specified, it is the responsibility of the contractor to furnish and install related components with characteristics and capacities compatible with the approved substitute component as required for systems to function as noted on drawings and specifications. There shall be no additional cost to the Government.

(d) In some instances it may have been impracticable to detail all items in specifications or on drawings because of variances in manufacturers' methods of achieving specified results. In such instances the contractor will be required to furnish all labor, materials, drawings, services and connections necessary to produce systems or equipment which are completely installed, functional, and ready for operation by facility personnel in accordance with their use.

(e) Claims by the contractor for delay attributed to unusually severe weather must be supported by climatological data covering the period and the same period for the 10 preceding years. When the weather in question exceeds in intensity or frequency the 10 year average, the excess experienced shall be considered "unusually severe." Comparison shall be on a monthly basis. Whether or not unusually severe whether in fact delays the work will depend upon the effect of weather on the branches of work being performed during the time under consideration.

(End of Clause)

[53 FR 1632, Jan. 21, 1988]

852.237-70 Contractor responsibilities.

(a) Fixed-Price negotiated or advertised service contracts, other than automobile, ambulance and aircraft services, will include the following clause:

CONTRACTOR RESPONSIBILITIES (APR 1984)

The contractor shall obtain all necessary licenses and/or permits required to perform this work. He/she shall take all reasonable precautions necessary to protect persons and property from injury or damage during the performance of this contract. He/she shall be responsible for any injury to himself/herself, his/her employees, as well as for any damage to personal or public property that occurs during the performance of this contract that is caused by his/her employee's fault or negligence, and shall maintain personal liability and property damage insurance having coverage for a limit as required by the laws of the State of ——. Further, it is agreed that any negligence of the Government, its officers, agents, servants and employees, shall not be the responsibility of the contractor hereunder with the regard to any claims, loss, damage, injury and liability resulting therefrom.

(End of Clause)

(b) Automobile, ambulance and aircraft service contracts will utilize the clause prescribed in 852.237-71.

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

852.237-71 Indemnification and insurance (vehicle and aircraft service contracts).

(a) Contracts for vehicle and aircraft services will utilize the following clause as provided in 828.306.

INDEMNIFICATION AND INSURANCE (APR 1984)

(a) *Indemnification*. The contractor expressly agrees to indemnify and save the Government, its officers, agents, servants, and employees harmless from and against any and all claims, loss, damage, injury, and liability, however caused, resulting from, arising out of, or in any way connected with the performance of work under this agreement. Further, it is agreed that any negligence or alleged negligence of the Government, its offficers, agents, servants, and employees, shall not be a bar to a claim for indemnification unless the act or omission of the Government, its officers, agents, servants, and employees is the sole, competent, and producing cause of such claims, loss, damage, injury, and liability. At the option of the contractor, and subject to the approval by the contracting officer of the sources, insurance coverage may be employed as guaranty of indemnification.

(b) *Insurance*. Satisfactory insurance coverage is a condition precedent to award of a contract. In general, a successful bidder must present safisfactory evidence of full compliance with State and local requirements, or those below stipulated, whichever are the greater. More specifically, workman's compensation and employer's liability coverage will conform to applicable State law requirements for the service contemplated, whereas general liability and automobile liability of comprehensive type, shall in the absence of higher statutory minimums, be required in the amounts per vehicle used of not less than $200,000 per person and $500,000 per occurrence for bodily injury and $20,000 per occurrence for property damage. State approved sources of insurance coverage ordinarily will be deemed acceptable to the Veterans' Administration installation, subject to timely certifications by such sources of the types and limits of the coverages afforded by the sources to the bidder. (In those instances where airplane service is to be used, substitute the word "aircraft" for "automobile" and "vehicle" and modify coverage to require aircraft public and passenger liability insurance of at least $200,000 per passenger and $500,000 per occurrence for bodily injury, other than passenger liability, and $200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least $200,000 multiplied by the number of seats or passengers, whichever is greater.)

(End of Clause)

(b) *Exceptions*. The provisions of this 852.237-71 do not apply to emergency or sporadic ambulance service authorized by VA Manual MP-1, Part II, Chapter 3: *Provided*, That such service is not used solely for the purpose of avoiding entering into a continuing contract. *Provided further*, That such services will be obtained from firms known to carry insurance coverage in accordance with State or local requirements.

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

852.247-70 Transportation provision for bid evaluation.

In circumstance enunciated in 847.305-70, the following provision will be inserted in the IFB:

DETERMINING TRANSPORTATION COSTS FOR BID EVALUATION (APR 1984)

For the purpose of evaluating bids and for not other purpose, the delivered price per unit will be determined by adding the nationwide average transportation charge to the f.o.b. origin bid prices. The nationwide average transportation charge will be determined by applying the following formula: Multiply the guaranteed shipping weight by the freight, parcel post, or express rate, whichever is proper, to each destination shown below and then multiply the resulting transportation charges by the anticipated demand factor shown for each destination. Total the resulting weighted transportation charges for all destinations and divide the total by 20 to give the nationwide average transportation charge.

ANTICIPATED DEMAND

Area destination:	Factor
Oakland, California	3
Dallas, Texas	2
Omaha, Nebraska	3
Fort Wayne, Indiana	4
Atlanta, Georgia	3
New York, New York	5
Total of factors	20

(End of Provision)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 798, Jan. 7, 1985]

852.270-1 Representatives of contracting officers.

Whenever it is considered necessary to designate a representative under 801.603-70, the following provision will be made a part of the request for proposal or invitation to bid:

Representatives of Contracting Officers (Apr 1984)

The contracting officer reserves the right to designate representatives to act for him/her in furnishing technical guidance and advice or generally supervise the work to be performed under this contract. Such designation will be in writing and will define the scope and limitations of the designee's authority. A copy of the designation shall be furnished the contractor.

(End of Provision)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 798, Jan. 7, 1985]

852.270-2 Bread and bakery products.

The following clause will be inserted in all contracts for bread and bakery products:

Quantities (Apr 1984)

The bidder agrees to furnish up to 25 percent more or 25 percent less than the quantities awarded when ordered by the Department of Veterans Affairs.

(End of Clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

852.270-3 Purchase of shell fish.

Invitations for bids or requests for proposals covering oysters, clams or mussels, fresh or frozen, will contain the following clause:

Shellfish (Apr 1984)

The bidder certifies that oysters, clams, and mussels will be furnished only from plants approved by and operated under the supervision of shell fish authorities of States whose certifications are endorsed currently by the U.S. Public Health Service, and the names and certificate numbers of those shell fish dealers must appear on current lists published by the U.S. Public Health Service. These items shall be packed and delivered in approved containers, sealed in such manner that tampering is easily discernible, and marked with packer's certificate number impressed or embossed on the side of such containers and preceded by the State abbreviation. Containers shall be tagged or labeled to show the name and address of the approved producer or shipper, the name of the State of origin, and the certificate number of the approved producer or shipper.

(End of Clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 798, Jan. 7, 1985]

852.270-4 Commercial advertising.

All VA contracts will include the following clause:

Commercial Advertising (Nov 1984)

The bidder or offeror agrees that if a contract is awarded to him/her, as a result of this solicitation, he/she will not advertise the award of the contract in his/her commercial advertising in such a manner as to state or imply that the Department of Veterans Affairs endorses a product, project or commercial line of endeavor.

(End of Clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 798, Jan. 7, 1985]

852.271-70 Services provided eligible beneficiaries.

The following clause will be included in all contracts covering services provided to eligible beneficiaries:

Nondiscrimination in Services Provided Beneficiaries (Apr 1984)

The contractor agrees to provide all services specified in this contract for any person determined eligible by the Chief Medical Director, or designee, regardless of the race, color, religion, sex, or national origin of the person for whom such services are ordered. The contractor further warrants that he/she will not resort to subcontracting as a means of circumventing this provision.

(End of Clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

852.271-71 Visits to Department of Veterans Affairs guidance centers.

The following clause will be included in contracts entered into for services relating to vocational counseling:

Inspection (Apr 1984)

Any duly authorized representative of the Department of Veterans Affairs shall at all reasonable times be permitted to inspect the counseling and testing operations being performed under this contract and the records of these operations.

(End of Clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

852.271-72 Time spent by counselee in counseling process.

Insert the following clause in contracts entered into for services relating to vocational counseling:

TIME SPENT BY COUNSELEE IN COUNSELING PROCESS (APR 1984)

The contractor agrees that no counselee referred under the provisions of this agreement will be required to give any extra time in connection with the counseling process to supply test results or other information for purposes other than those specified in this contract.

(End of Clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

852.271-73 Use and publication of counseling results.

Insert the following clause in contracts entered into for services relating to vocational counseling:

PUBLISHING RESULTS (APR 1984)

The contractor agrees that none of the information or data gathered in connection with the services specified in this contract or studies or materials based thereon or relating thereto will be publicized without the prior approval of the Chief Benefits Director or his/her designee.

(End of Clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

852.271-74 Inspection.

Insert the following clause in contracts entered into with educational institutions and training establishments for education and rehabilitation:

INSPECTION (APR 1984)

The contractor will permit the duly authorized representative of the Department of Veterans Affairs to visit the place of instruction as may be necessary and examine the training facilities and work of the veterans in training under this contract.

(End of Clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

852.271-75 Extension of contract period.

The following clause will be included in contracts where appropriate pertaining to services for education and rehabilitation:

EXTENSION OF CONTRACT PERIOD (APR 1984)

This contract may be extended from year to year if agreeable to both parties provided the agreement for extension is consummated 30 days prior to the expiration date, and further provided that there is no change in the provisions, terms, conditions, or rate of payment. Any extension made hereunder is subject to the availability of funds during the period covered by the extension.

(End of Clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

PART 853—FORMS

Sec.
853.000 Scope of part.

Subpart 853.1—General

853.107 Obtaining forms.

Subpart 853.2—Prescription of Forms

853.201 Federal acquisition system.
853.201-1 Contracting authority and responsibilities (SF 1402).
853.213 Small purchase and other simplified purchase procedures (VA Forms 90-2138, 10-7078, 10-7079, 10-2570d, 10-2511, and 10-2421).
853.215 Contracting by negotiation (VA Form 10-1170).
853.236 Construction and architect-engineer contracts.
853.236-1 [Reserved]
853.236-2 Architect-engineer services (VA Form 08-6298).
853.271 Loan Guaranty, Education and Vocational Rehabilitation and Counseling Programs.
853.271-1 Loan Guaranty Program (VA Forms 26-6724 and 26-1839).
853.271-2 Vocational Rehabilitation and Counseling Programs (VA Forms 22-1903, 22-1905 and 22-1931).
853.271-3 Education Programs (VA Forms 22-1982, 22-1982e, 22-1982c, and 22-7398).

Subpart 853.3—Illustration of Forms

853.300 Scope of subpart.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12639, Mar. 29, 1984, unless otherwise noted.

853.000 Scope of part.

This part prescribes Department of Veterans Affairs forms for use in the acquisition of goods and services. It only identifies forms which are used between VA and its contractors or the general public. It does not identify forms for uses internal to VA or between VA and another Federal agency.

[49 FR 12639, Mar. 29, 1984, as amended at 54 FR 40066, Sept. 29, 1989]

Subpart 853.1—General

853.107 Obtaining forms.

VA forms may be obtained from any VA contracting office or by requesting such forms from the Deputy Assistant Secretary for Acquisition and Materiel Management (91), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

[49 FR 12639, Mar. 29, 1984; 50 FR 798, Jan. 7, 1985; 54 FR 40066, Sept. 29, 1989]

Subpart 853.2—Prescription of Forms

853.201 Federal acquisition system.

853.201-1 Contracting authority and responsibilities (SF 1402).

Current delegations of contracting authority appointed with VA Form 90-2267, Certificate of Designation (contracting officer), will remain in effect until replaced with an executed SF 1402, Certificate of Appointment, in accordance with 801.603-3.

853.213 Small purchase and other simplified purchase procedures (VA Forms 90-2138, 10-7078, 10-7079, 10-2570d, 10-2511, and 10-2421).

The following forms are prescribed as stated below and in the circumstances and within the limitations provided:

(a) VA Form 90-2138, Order for Supplies or Services shall be used as indicated in 813.505-2. It will be used in lieu of but similar to OF 347, Order for Supplies and Services.

(b) The following forms are for use for obtaining indicated medical and dental services within the limitations prescribed in 813.505-2:

(1) VA Form 10-7078, Authorization and Invoice for Medical and Hospital Services.

(2) VA Form 10-7079, Request for Outpatient Medical Services.

(3) VA Form 10-2570d, Dental Record, Authorization and Invoice for Outpatient Services.

(c) VA Form 10-2511, Authority and Invoice for Travel by Ambulance or Other Hired Vehicle, will be used as prescribed in 813.505-2(c).

(d) VA Form 10-2421, Prosthetics Authorization and Invoice, will be used from indicated procurements not to exceed $300 as prescribed in 813.505-2.

[49 FR 12639, Mar. 29, 1984, as amended at 50 FR 798, Jan. 7, 1985]

853.215 Contracting by negotiation (VA Form 10-1170).

VA Form 10-1170, Application for Furnishing Nursing Home Care to Beneficiaries of the Department of Veterans Affairs, will be utilized for establishing contract nursing home care for VA beneficiaries.

853.236 Construction and architect-engineer contracts.

853.236-1 [Reserved]

853.236-2 Architect-engineer services (VA Form 08-6298).

VA Form 08-6298, Architect-Engineer Fee Proposal, will be used as prescribed in 836.606-71.

853.271 Loan Guaranty, Education, and Vocational Rehabilitation and Counseling Programs.

853.271-1 Loan Guaranty Program (VA Forms 26-6724 and 26-1839).

(a) VA Form 26-6724, Invitation, Bid, and/or Acceptance or Authorization, will be used in obtaining services specified in Subpart 871.1.

(b) VA Form 26-1839, Compliance Inspection Report, will be used for inspection of repairs for properties under the Loan Guaranty Program as specified in 846.472.

853.271-2 Vocational Rehabilitation and Counseling Programs (VA Forms 22-1903, 22-1905, and 22-1931).

The following forms will be used in acquiring education or rehabilitation services as prescribed in Subpart 871.2:

(a) VA Form 22-1903, Contract for Education and Training.

(b) VA Form 22-1905, Authorization and Certification of Entrance or Reentrance into Training and Certification of Trainee Status.

(c) VA Form 22-1931, Contract for Services Relating to Vocational Counseling.

853.271-3 Education Programs (VA Forms 22-1982, 22-1982e, 22-1982c, and 22-7398).

The following forms are prescribed for use in obtaining services for the Veterans Benefits Administration Education programs:

(a) VA Form 22-1982, State Approving Agency (SAA) Reimbursement Contract.

(b) VA Form 22-1982e, Schedule No 1 to the SAA Reimbursement Contract; Accredited and Non-Accredited Courses Under Chapter 32, 34, and 35, or 36, of Title 38 United States Code, whichever is applicable.

(c) VA Form 1982c, Schedule No. 2 to the SAA Reimbursement Contract; Apprentice Or Other Training On-the-Job.

(d) VA Form 22-7398, Quarterly Report of State Approving Agency Activities Under Chapter 36, Title 38, United States Code.

Subpart 853.3—Illustration of Forms

853.300 Scope of subpart.

VA Forms will not be illustrated in this VAAR. Persons wishing to obtain copies of VA forms prescribed in the VAAR may do so in accordance with 853.107.

SUBCHAPTER I—DEPARTMENT SUPPLEMENTARY REGULATIONS

PART 870—SPECIAL PROCUREMENT CONTROLS

Subpart 870.1—Controls

Sec.

870.111 Subsistence.
870.111-5 Frozen processed food products.
870.112 Telecommunications equipment.
870.113 Paid use of conference facilities.
870.114 Asbestos.
870.114-1 General.
870.114-2 Background.
870.114-3 Approving authority.
870.114-4 Exempted products containing asbestos.
870.115 Food service equipment.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12640, Mar. 29, 1984, unless otherwise noted.

Subpart 870.1—Controls

870.111 Subsistence.

870.111-5 Frozen processed food products.

(a) All frozen, processed food products procured which contain meat, poultry or a significant proportion of eggs, will be processed or prepared in plants operated under the supervision of the U.S. Department of Agriculture (USDA). The product will be inspected and approved in accordance with the regulations of the USDA governing meat, poultry or egg inspection. A label or seal, affixed to the container, indicating compliance with these regulations will be accepted as evidence of compliance. The product must bear a label complying with the Federal Food, Drug and Cosmetic Act which requires that all ingredients be listed according to the order of their predominance.

(b) All frozen, processed food products procured which contain fish or fish products will be processed or prepared in plants operated under the supervision of the U.S. Department of Commerce (USDC). The products listed in USDC publication titled, "Approved List of Sanitarily Inspected Fish Establishments" are processed in plants under Federal inspection of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce. The inspected products packed under various labels bearing the brand names are produced in accordance with current U.S. Grade Standards or official product specifications, packed under optimum hygienic conditions, and must meet Federal, State, and city sanitation and health regulations. Such brand label or USDC seal, affixed to a container, indicating compliance with USDC regulations will be accepted as evidence of compliance. In lieu thereof, the shipment may be lot inspected by the USDC and containers stamped to indicate acceptance or a Certification of Inspection issued to accompany the shipment. The product must bear a label complying with the Federal Food, Drug and Cosmetic Act which requires that all ingredients be listed according to the order of their predominance.

(c) Producers of frozen bakery products which are shipped in interstate commerce are required to comply with the Federal Food, Drug and Cosmetic Act. Therefore, it must be vertified that the product, in fact was shipped interstate or that the producer ships products to other purchasers interstate. In addition, the product must bear a label complying with the Act which requires that all ingredients be listed according to the order of their predominance.

[49 FR 12640, Mar. 29, 1984, as amended at 54 FR 40066, Sept. 29, 1989]

870.112 Telecommunications equipment.

(a) Solicitations, including those for construction, based on detailed purchase descriptions or formal specifications for telecommunications equipment, as defined in VA Manual MP-6, Part VIII,[1] will include the clause required by 852.210-74.

(b) The descriptive literature to be furnished by the contractor after award, required by the clause in

---

[1] Available at any Veterans Administration facility.

852.210-74, is to be reviewed and approved by the Office of Information Resources Operations prior to delivery and/or installation by the contractor. Promptly upon receipt of the descriptive literature, contracting officers will forward it together with a copy of the contract, the formal specification, or the detailed purchase description to the Deputy Assistant Secretary for Acquisition and Materiel Management (93).

(c) Solicitations, including those for construction, for telecommunications equipment based on "brand name or equal" purchase description are subject to the following:

(1) Prior to award, contracting officers will forward to the Deputy Assistant Secretary for Acquisition and Materiel Management (93), the abstract of bids, one copy of each offer received, including descriptive literature and pertinent letters, and the comments and recommendations of the contracting officer.

(2) No commitments are to be made to contractors prior to receipt of Central Office reaction.

(3) Allowance of at least 30 calendar days for acceptance will be specified in the solicitation in order to allow sufficient time for the review required by this paragraph (c). (See FAR 52.214-16.)

[49 FR 12640, Mar. 29, 1984, as amended at 50 FR 796, Jan. 7, 1985; 54 FR 30044 and 30045, July 18, 1989; 54 FR 40066, Sept. 29, 1989]

870.113 Paid use of conference facilities.

(a) The rental of space for VA-sponsored symposia and training sessions may be unwarranted when other alternatives are available at no expense or reduced expense to the Government. After the geographical location for a VA conference has been selected, based on minimum overall travel costs for all Government participants and other relevant factors, a request for conference space will be forwarded to the servicing Supply activity. The request for conference space should afford the contracting officer every opportunity to secure rent-free facilities.

(b) The following criteria for the selection of an appropriate facility will apply:

(1) A thorough effort will be made to schedule conferences and training sessions so that the conference facilities of VA installations in the city where the conference is held may be used.

(2) Where no VA space is available, the General Services Administration will be contacted to determine if there is other Government agency space which may be used.

(3) Efforts will be made to schedule conferences, where Government space is not available, through hotels and motels which offer free conference facilities in exchange for a stipulated number of lodging reservations for participants. Surcharges per lodging or increased room rates, to offset the cost of the conference room, shall be considered payment for such space.

(4) In the event none of these is available on the desired dates, consideration will be given to rescheduling the conference to avail VA of the use of facilities without payment of a fee.

(5) If none of the above is practical, rental conference space will be obtained. Complete documentation of efforts to secure free conference space, as outlined above, will be maintained in the purchase order file. The costs of coffee, refreshments, meals, lodging, tips and other supplies and services not directly related to the presentations within the conference space are not allowable.

(c) The conference coordinator of the requesting organization will continue to be responsible for individual room reservations, including any cancellations.

[49 FR 12640, Mar. 29, 1984, as amended at 54 FR 40066, Sept. 29, 1989]

870.114 Asbestos.

870.114-1 General.

This section applies to the purchase and use of asbestos products and equipment or materials containing asbestos products in the Department of Veterans Affairs.

870.114-2 Background.

Exposure to asbestos is associated with chronic and debilitating lung disease and cancer. To reduce the health hazard related to the exposure to asbestos, the U.S. Environmental Protection Agency and the U.S. Department of Labor (Occupational Safety and Health Administration) have issued specific regulations on asbestos. Although these regulations do not call for a complete ban on the use of asbestos, they do impose strict requirements on its use, airborne contamination and disposal.

870.114-3 Approving authority.

Asbestos products and equipment or materials containing asbestos products shall not be specified nor purchased for use in the Department of Veterans Affairs if any suitable substitutes are available. If suitable substitutes are not available, specific authorization to purchase and use asbestos products and equipment or materials specifying asbestos products, must be granted by the Secretary or designee. Requests for authorization will be submitted through the Director, Facilities Engineering Service (085E). The following information will be provided:

(a) The name of the product, source of supply, and physical form of asbestos as used in the product or equipment;

(b) A description of use, including purpose, urgency, methodology, qualities, and by whom; and

(c) Safeguards being employed, with particular emphasis on the identification of the asbestos products, and procedures to be taken to prevent airborne contamination and disposal.

[49 FR 12640, Mar. 29, 1984, as amended at 54 FR 40066, Sept. 29, 1989]

870.114-4 Exempted products containing asbestos.

VA Central Office, Facilities Engineering Service (085E), is responsible for maintaining a list of products containing asbestos which are exempted by the Secretary or designee from this policy.

[49 FR 12640, Mar. 29, 1984, as amended at 54 FR 40066, Sept. 29, 1989]

870.115 Food service equipment.

(a) All new food service equipment purchased for Dietetic Service through other than the Defense General Supply Center (DGSC) sources must meet requirements set forth by the National Sanitation Foundation (NSF).

(b) The contracting officer will accept an affixed NSF label and/or documentation of the certification by NSF from the contractor as evidence that the subject equipment meets sanitation standards issued by the Foundation.

PART 871—LOAN GUARANTY AND VOCATIONAL REHABILITATION AND COUNSELING PROGRAMS

Subpart 871.1—Loan Guaranty Program

Sec.
871.100 Scope of subpart.
871.101 Policy.
871.102 Authorization for repairs to properties.
871.103 Repair specifications.
871.104 Qualification of bidders.
871.105 Debarred, suspended, and ineligible bidders.
871.106 Lien waivers.
871.107 Stipulations against liens.

Subpart 871.2—Vocational Rehabilitation and Counseling Program

871.200 Scope of subpart.
871.201 General.
871.201-1 Requirements for use of contracts.
871.201-2 Requirements when contracts are not required.
871.201-3 Medical services.
871.201-4 Letter contracts.
871.202 Marking and release of supplies.
871.203 Renewals or supplements to contracts.
871.204 Guaranteed payment.
871.205 Proration of charges.
871.206 Other fees and charges.
871.207 Payment of tuition or fees.
871.208 Rehabilitation facilities.
871.209 Records and reports.
871.210 Correspondence courses.
871.211 Information concerning correspondence courses.

Subpart 871.3—Education Program [Reserved]

AUTHORITY: 38 U.S.C. 210, 40 U.S.C. 486(c), 38 CFR 36.4320, 38 U.S.C. Chs. 31, 32, 33, 34, 35, and 37 and Pub. L. 98-77.

SOURCE: 49 FR 12641, Mar. 29, 1984, unless otherwise noted.

Subpart 871.1—Loan Guaranty Program

871.100 Scope of subpart.

This subpart sets forth policy and procedure with respect to the loan guaranty and direct loan programs as it pertains to property management, including the acquisition, management, and disposition of property, real, personal, or mixed, which were secured by loans guaranteed, insured, or made pursuant to Title 38, United States Code.

871.101 Policy.

It is the policy of the Department of Veterans Affairs that all procurement effected by sealed bidding or negotiation pertaining to the expenditure of funds for the repair and maintenance of Department of Veterans Affairs property acquired under Chapter 37, Title 38, United States Code, be made in accordance with those regulations as set forth in FAR Parts 14, 15 and 16 as supplemented or implemented by Parts 814, 815 and 816 of this Chapter and otherwise authorized by this Subpart 871.1 and specific subparts or sections as stated in this subpart.

[49 FR 12641, Mar. 29, 1984, as amended at 54 FR 40066, Sept. 29, 1989; 55 FR 31600, Aug. 3, 1990]

871.102 Authorization for repairs to properties.

(a) Except as provided in this subpart, Directors, VA Regional Offices, are authorized to purchase supplies and services for the repair to any Department of Veterans Affairs property acquired under Chapter 37, Title 38, United States Code, where the cost does not exceed $5,000 on any single transaction.

(b) In those cases where the expenditure is known or estimated to exceed $5,000, the request, together with the loan guaranty folder, will be forwarded to the Chief Benefits Director for approval.

(c) During the period when the Department of Veterans Affairs has assumed custody of the property from a holder and prior to its conveyance to the Deparment of Veterans Affairs pursuant to 38 CFR 36.4320, repairs are authorized not in excess of $3,500 when appropriate to make the property ready for sale at an earler date than would otherwise be possible if the repair program was delayed until such time as the Department of Veterans Affairs acquired absolute title. In those cases where the expenditure is known or estimated to exceed $3,500, the request, together with the loan guarantee folder, will be forwarded to the Chief Benefits Director for approval.

(d) No repairs may be made to property by the holder when it has continued custody except for emergeny repairs not in excess of $200 unless adequate notice has been given the Director, VA Regional Office. Emergency repairs as applied in this paragraph will be deemed to mean those requiring immediate action to preserve the property from serious damage or to correct a situation imminently dangerous to life or limb, and includes the initial cleanup of the property in order to prevent the risk of damage by fire or vandalism.

(e) An approved management broker may be authorized, at the time a property is listed with him/her, to incur expenses for fuel and utilities or other recurring items which are required to be furnished by the Department of Veterans Affairs to its tenants or are required in the maintenance of the property. Advance blanket authorizations to management brokers will be limited to repairs not in excess of $200 in any transaction, (the management broker will either submit receipts with his/her invoice or maintain such receipts for inspection). Expenditures in excess of $200 require prior approval of the Director, Regional Office, having jurisdiction of the property. Repair jobs may not be split to circumvent this restriction.

[49 FR 12641, Mar. 29, 1984, as amended at 55 FR 31600, Aug. 3, 1990]

871.103 Repair specifications.

(a) Repair specifications covering authorized repairs will be formulated in sufficient detail to permit competitive bids on an identical basis and as a minimum will contain the following.

(1) Requirement that the contractor obtain all necessary permits.

(2) Requirement that inspection will be made at stated intervals if appropriate and that final inspection will be made in all cases.

(3) Any other requirement necessary to protect the interests of the Government.

(b) The minimum construction requirements may be used as a guide in the preparation of repair specifications. Specifications should not require conformance with minimum construction requirements in cases where scope of repairs are minor, the relatively small value of the property or its poor salability. The quality of repairs to be specified shall be consistent with the type and value of the property.

(c) In all cases, the specifications for repairs will be based on one of the following categories:

(1) Minimum specifications for rental purposes.

(2) Average specifications for sales purposes.

(3) Above average specifications for desirable properties.

871.104 Qualification of bidders.

(a) Qualification of bidders shall be established in accordance with procedures outlined in FAR Subpart 9.1 and Subpart 809.1 of this chapter.

(b) Management brokers are not considered acceptable bidders for repair contracts due to their close association on a fee basis with the Department of Veterans Affairs. This restriction would apply equally to any contracting firm in which the management broker has an interest and in which it could be presumed that such firm would have an advantage over the other bidders. This does not preclude the performance of work by management brokers of a routine recurring maintenance category or minor repairs by personnel employed directly on the payroll of the broker. In these cases, it must be established that any charges for such services are not in excess of the prevailing fees for like services in the area.

871.105 Debarred, suspended and ineligible bidders.

Firms or individuals will be debarred and suspended in accordance with FAR Subpart 9.4 and Subpart 809.4 of this chapter.

871.106 Lien waivers.

(a) Contracts in the amount of $2,500 or more will contain a requirement that the contractor will sign a formal release in full or a lien waiver before payment may be made. The release or waiver will accompany the contractor's invoice.

(b) Contractors will be required to notify the Director, Regional Office, of any subcontractors for services or materials in excess of $2,500. Such subcontractors or material men will be required to sign the release or waiver jointly with the prime contractor or to execute release or waiver in his/her own name.

(c) Prior to any authorized partial payment the contractor will be required to execute a release or waiver.

(d) Due to the variations of local law, no standard release or waiver is prescribed. Each release or waiver will be prepared in accordance with local law and will be in form acceptable by the District Counsel.

871.107 Stipulations against liens.

(a) Where determined necessary by the Director, Regional Office, contracts in an amount less than $2,500 may contain the following:

> The contractor expressly waives any and all rights to file or maintain any mechanics lien or claim against the aforesaid premises.

(b) Contracts in the amount of $2,500 or more where there is doubt as to the final responsibility of the contractor will provide maximum potection to the Government by including such requirements as are available under local law. Advice and approval of any contract stipulation or legal stipulations against liens will be obtained from the District Counsel.

Subpart 871.2—Vocational Rehabilitation and Counseling Program

871.200 Scope of subpart.

This subpart establishes policy and procedures for the vocational rehabilitation and counseling program as it pertains to contracts for training and rehabilitation services, approval of institutions (including rehabilitation facilities), training establishments, and employers under Chapter 31, Title 38, United States Code, and contracts for counseling services under Chapter 32, 34, and 35, Title 38, United States Code and Pub. L. 98-77, Emergency Veterans' Jobs Training Act of 1983.

871.201 General.

871.201-1 Requirements for the use of contracts.

Contracts will be negotiated for tuition, fees, books, supplies and other allowable expenses incurred by the institution, training establishment or employer for the training and rehabilitation of eligible veterans under Chapter 31, Title 38, United States Code, under the following conditions:

(a) With institutions offering courses of instruction by correspondence. Courses of instruction by correspondence is deemed to mean a course of education or training conducted by mail consisting of regular lessons or reading assignments, the preparation of required written work which involves the application of principles studied in each lesson, the correction of assigned work with such suggestions or recommendation as may be necessary to instruct the student, the keeping of student achievement records and issuance of a diploma, certificate, or other evidence to the student upon satisfactorily completing the requirements of the course.

(b) With institutions, training establishments, employers, or individuals approved to provide training and rehabilitation services under Chapter 31, Title 38, United States Code, for whom special services or special courses are furnished at the request of the Department of Veterans Affairs. The terms "special services" or "special courses" have the same meaning as under 831.7001-2.

[49 FR 12641, Mar. 29, 1984; 50 FR 798, Jan. 7, 1985]

871.201-2 Requirements when contracts are not required.

(a) When a contract is not required, a signed statement of charges will be obtained from the educational institution or training establishment for courses to be offered, including the rate of tuition fees, and separate charges, if any, for books, supplies, and equipment handling charges, refund policy and such other provisions as are required to determine proper payment. The statement of charges may be in the form of a statement on VA Form 22-1905, Authorization and Certification of Entrance or Reentrance into Training, that charges will be in accordance with catalog or other published document (identify publication). The statement of charges may not exceed those charges paid by nonveterans or that is published in the school catalog or other published document.

(b) For the purpose of this section a contract will not be required when all tuition, fees, books, supplies, or services necessary to train, or educate an eligible veteran under Chapter 31, Title 38, United States Code, are published in the school catalog or other published document.

[49 FR 12641, Mar. 29, 1984; 50 FR 798, Jan. 7, 1985]

871.201-3 Medical services.

The medical services provided trainees under vocational rehabilitation and education contracts, agreements or arrangements are separate and distinct from any other medical service under the jurisdiction of the Veterans Health Services and Research Administration to which the veteran may be entitled and no certificate of eligibility is required from that administration.

[49 FR 12641, Mar. 29, 1984, as amended at 54 FR 40066, Sept. 29, 1989]

871.201-4 Letter contracts.

Letter contracts are authorized for use in accordance with the provision of FAR 16.603 and in those cases in which it is not possible to complete a formal contract with an approved educational institution prior to the enrollment of eligible veterans for training.

871.202 Marking and release of supplies.

Supplies will not be marked to indicate ownership by the United States and will be deemed released to the trainee at the time they are furnished.

871.203 Renewals or supplements to contracts.

Except for contracts for educational and vocational counseling, contracts may be renewed from year to year, providing there is no change in the schedule or provisions as originally consummated by completion of a renewal agreement no later than 30 days prior to the expiration of the contract.

(a) Supplements may be negotiated at any time during the contract period upon the completion of the supplemental agreement.

(b) Contracts for educational and vocational counseling may provide for automatic extension from year to year.

871.204 Guaranteed payment.

No contract or agreement may be entered into with any institution or training establishment whereby the Department of Veterans Affairs will be required to pay a minimum charge, or required to enroll a minimum number of participants per quarter, semester, term, course, or other period.

[49 FR 12641, Mar. 29, 1984; 50 FR 798, Jan. 7, 1985]

871.205 Proration of charges.

The contract will include the exact formula agreed on for the proration of charges in the event that the veteran's program is interrupted or discontinued prior to the end of the term, semester, quarter, or other period, or the program is completed in less time than stated in the contract.

871.206 Other fees and charges.

Fees and other charges which are not prescribed by law but are by nongovernmental organizations, such as initiation fees required to become a member of a labor union and the dues necessary to maintain membership incidental to training on the job or to obtaining employment during a period in which the veteran is a Chapter 31 participant, may be paid provided there are no facilities feasibly available whereby the necessary training can be feasibly accomplished or employment obtained without paying such charges. Payment for such fees will be made in accordance with Part 813.

[49 FR 12641, Mar. 29, 1984, as amended at 54 FR 40066, Sept. 29, 1989]

871.207 Payment of tuition or fees.

(a) Contracts, agreements, or arrangements requiring the payment of tuition or fees will provide for the following:

(1) Payment for tuition or fees will be made in arrears and will be prorated in installments over the school year or the length of the course except that institutions may be paid in accordance with the provision of paragraph (a)(2) of this section, provided such institutions operate on a regular term, quarter, or semester basis and normally accept students only at the beginning of the term, quarter, or semester and provided for further such institutions are either:

(i) Institutions of higher learning that use a standard unit of credit recognized by accrediting associations (such institutions will include those which are members of recognized national or regional educational accrediting associations, and those which, although not members of such accrediting associations, grant standard units of credit acceptable at full value without examination by collegiate institutions which are members of national or regional accrediting associations).

(ii) Public tax supported institutions.

(iii) Institutions operated and controlled by State, county, or local boards of education.

(2) Institutions coming within the exceptions of paragraph (a)(1) of this section which have a refund policy providing for a graduated scale of charges for purposes of determining refunds may be paid part or all such tuitions or fees for a term, quarter, or other period of enrollment immediately following the date on which the refund expires.

(3) Proration of charges will not apply to a fee which is for noncontinuing service such as registration fee, etc.

(b) The period for which payment of charges may be made will be the period of actual enrollment and subject to the following:

(1) The effective date will be the date of the trainee's entrance into training status except that payment may be made for an entire-semester, quarter, or term in institutions operating on that basis if the trainee enters no later than the final date set by the institution for enrolling for full credit.

(2) In those cases where the institution has not set a final date for enrolling for full credit or will not set a date acceptable to the Veterans Administration, payment may be prorated on the basis of attendance regardless of the refund policy.

(3) If an institution customarily charges for the amount of credit or number of hours of attendance for which a trainee enrolls, payment may be made on that basis when a trainee enrolls after the final date permitted for carrying full credit for the semester or term.

(c) The terminal date to which payment will be made is the day following:

(1) The end of the semester, term or quarter during which the training is furnished.

(2) The date of interruption or discontinuance of training.

(3) The date of completion of the course.

[49 FR 12641, Mar. 29, 1984, as amended at 50 FR 798, Jan. 7, 1985]

871.208 Rehabilitation facilities.

The provisions for payment of charges to rehabilitation facilities for the rehabilitation services provided under Chapter 31 are paid in the same manner as charges for educational and vocational services through contract, agreement, or other arrangement.

871.209 Records and reports.

Contracts, agreements, or arrangements will provide for the number and frequency of reports, adequate financial records to support payment for each trainee and maintenance of attendance and progress records. Such records will be preserved for a period of three years.

871.210 Correspondence courses.

Contracts with institutions for correspondence courses will provide that:

(a) Major changes in courses or course material will not be binding on the Department of Veterans Affairs until such time as a supplemental agreement is negotiated to the contract.

(b) Minor changes in course or course material not affecting the length of the course or number of lessons and not lowering the educational value of the course or the quality of the course material such as revision of text, the substitution of a newer lesson for an older one, or the substitution of equipment of equal or greater value, are permitted without supplemental agreements. Such minor changes and revisions shall be placed on file with the contracting officer at the time of the change or revision.

(c) Trainees be provided with prompt and adequate lesson service and, unless otherwise specified in the contract, be furnished the same texts, lessons service, diplomas, and other services as are normally provided for regularly enrolled nonveteran students.

(d) All lessons be adequately serviced on an individual basis. Grouping of lessons, into units or partial servicing does not meet this requirement.

(e) Each lesson must have a separate examination adequate in terms of lesson content.

(f) The training of persons under a Department of Veterans Affairs contract or the fact that the United States is utilizing the facilities of the institution for training veterans shall not be used in any way to advertise the institution. References in the advertising media or correspondence of the institution shall be limited to a list of courses under Chapter 31, Title 38, United States Code, and shall not be directed or pointed specifically to veterans.

(g) The rates, fees, and charges are not in excess of those charged nonveterans.

(h) That payment will be made on a lesson completed basis in areas for assignments sent in by trainees and serviced during a pay period as established by the contract.

(i) Payment will be made only once for each lesson even through it is necessary to service a lesson more than once.

871.211 Information concerning correspondence courses.

Specific questions on correspondence courses as to the content of courses, academic credit, and entrance requirements for courses included in Department of Veterans Affairs contracts may be directed to the institutions offering the courses.

Subpart 871.3—Education Program [Reserved]

CHAPTER 9—DEPARTMENT OF ENERGY

(Parts 900 to 999)

SUBCHAPTER A—GENERAL

Part		Page
901	Federal Acquisition Regulations System	303
902	Definitions of words and terms	310
903	Improper business practices and personal conflicts of interest	311
904	Administrative matters	313

SUBCHAPTER B—ACQUISITION PLANNING

905	Publicizing contract actions	318
906	Competition requirements	319
907	Acquisition planning	320
908	Required sources of supplies and services	323
909	Contractor qualifications	330
910	Specifications, standards, and other purchase descriptions	337
912	Contract delivery or performance	338

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

913	Small purchases and other simplified purchase procedures	340
914	Sealed bidding	340
915	Contracting by negotiation	342
916	Types of contracts	372
917	Special contracting methods	375

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

919	Small business and small disadvantaged business concerns	418
920	Labor surplus area concerns	420
922	Application of labor laws to Government acquisition	420
923	Environment, conservation, and occupational safety	429
24	Protection of privacy and freedom of information	430

Part		Page
925	Foreign acquisition	430

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

Part		Page
927	Patents, data, and copyrights	432
928	Bonds and insurance	445
931	Contract cost principles and procedures	447
932	Contract financing	448
933	Protests, disputes and appeals	452

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

Part		Page
935	Research and development contracting	457
936	Construction and architect-engineer contracts	465
937	Service contracting	482

SUBCHAPTER G—CONTRACT MANAGEMENT

Part		Page
942	Contract administration	484
943	Contract modifications	492
944	Subcontracting policies and procedures	493
945	Government property	495
947	Transportation	507
949	Termination of contracts	507
950	Extraordinary contractual actions	509
951	Use of government sources by contractors	513

SUBCHAPTER H—CLAUSES AND FORMS

Part		Page
952	Solicitation provisions and contract clauses	516

SUBCHAPTER I—AGENCY SUPPLEMENTARY REGULATIONS

Part		Page
970	DOE management and operating contracts	551
971	Review and approval of contract actions	644

SUBCHAPTER A—GENERAL

PART 901—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 901.1—Purpose, Authority, Issuance

Sec.
901.101 Purpose.
901.102 Authority.
901.103 Applicability.
901.103-70 Exclusions.
901.104 Issuance.
901.104-1 Publication and code arrangement.
901.104-2 Arrangement of regulations.
901.104-3 Copies.
901.105 OMB control numbers.

Subpart 901.2—Administration

901.201-1 The two councils.

Subpart 901.3—Agency Acquisition Regulations

901.301 Policy.
901.301-70 Acquisition letters.
901.301-71 Amendment of regulation.
901.301-72 Other issuances related to acquisition.
901.303 Codification and public participation.

Subpart 901.4—Deviations From the FAR

901.402 Policy.
901.403 Individual deviations.
901.404 Class deviations.

Subpart 901.5—Agency and Public Participation

901.570 Rulemaking.

Subpart 901.6—Contracting Authority and Responsibilities

901.601 General.
901.601-70 Responsibility of the Head of the Contracting Activity.
901.602-3 Ratification of unauthorized commitments.
901.603 Selection, appointment and termination of appointment.
901.603-1 General.
901.603-70 Modification of appointment.
901.603-71 Responsibility of other government personnel.
901.603-72 Contracting officer's representatives.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 11936, Mar. 28, 1984, unless otherwise noted.

Subpart 901.1—Purpose, Authority, Issuance

901.101 Purpose.

(a) This subpart establishes Chapter 9, the Department of Energy Acquisition Regulation, within Title 48, the Federal Acquisition Regulation System, of the Code of Federal Regulations. The short title of this regulation shall be DEAR.

(b) The purpose of the DEAR is to implement the Federal Acquisition Regulations (FAR) where further implementation is needed, and to supplement the FAR when coverage is needed for subject matter not covered in the FAR. The DEAR is not, by itself, a complete document as it must be used in conjunction with the FAR. When a FAR Part or Subpart is adequate for use without further DOE implementation, no mention is cited in the DEAR. Therefore the order of use is (1) FAR; (2) DEAR.

901.102 Authority.

The DEAR and amendments thereto are issued by the Procurement Executive pursuant to a delegation from the Secretary in accordance with the authority of section 644 of the Department of Energy Organization Act (42 U.S.C. 7254), section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. 486(c)), and other applicable law.

[52 FR 38422, Oct. 16, 1987]

901.103 Applicability.

The FAR and DEAR apply to all DOE acquisitions of supplies and services which obligate appropriated funds unless otherwise specified in this regulation. These regulations shall be used as guides to the extent practicable for acquisitions using non-appropriated funds.

901.103-70 Exclusions.

Certain DOE policies and procedures which might otherwise come within the scope of this regulation may be excluded from the DEAR where there is appropriate justification, such as:

(a) Subject matter which bears a security classification (See FAR 4.402).

(b) Subject matter which deals with assistance programs where the award instruments are other than acquisition contracts and purchase orders. The DOE financial assistance policies are codified separately at Part 600 of Title 10 of the Code of Federal Regulations.

(c) Subject matter which deals with the Department's sales programs. These matters are codified separately at various parts of Title 10 of the Code of Federal Regulations.

(d) Subject matter which is procedural in nature and which is internal to the operation of the Department. These matters are contained in the DOE Directives System.

(e) Instructional or training material that more fully explains matters covered in the FAR and DEAR.

(f) Subject matter which is procedural in nature and which is internal to the operation of the Federal Energy Regulatory Commission (FERC). These matters are contained in the FERC Directive System.

[49 FR 11936, Mar. 28, 1984, as amended at 50 FR 12182, Mar. 27, 1985]

901.104 Issuance.

901.104-1 Publication and code arrangement.

(a) The DEAR and its subsequent changes are published in (1) daily issues of the FEDERAL REGISTER, (2) cumulative form of the Code of Federal Regulations, and (3) a separate loose-leaf edition.

(b) The DEAR is issued as Chapter 9 of Title 48 of the Code of Federal Regulations.

901.104-2 Arrangement of regulations.

(a) *General.* The DEAR is divided into the same parts, subparts, sections, subsections and paragraphs as is the FAR. However, when the FAR coverage is adequate by itself, there will be no corresponding DEAR part, subpart, etc.

(b) *Numbering.* Where the DEAR implements the FAR, the implementing part, subpart, section or subsection of the DEAR will be numbered and captioned, to the extent feasible, the same as the FAR part, subpart, section or subsection being implemented except that the implementation will be preceded with a 9 or a 90 such that there will always be three numbers to the left of the decimal. For example, the DEAR implementation of FAR 1.104-1 is shown as 901.104-1 and the DEAR implementation of FAR 24.1 is shown as 924.1. Material which supplements the FAR will be assigned the numbers 70 and up. For example, by statute, DOE requires a more comprehensive organizational conflicts of interest review than is contemplated by FAR 9.5. This supplementary material is identified as 909.570.

(c) *References and citations.* (2) This regulation may be referred to as the Department of Energy Acquisition Regulation or the DEAR.

(3) References to FAR materials within this regulation will include FAR and the identifying number, for example, FAR 1.104-2(c)(3). References to DEAR materials within this regulation will simply cite the identifying number, for example, 901.104-2(c)(3).

901.104-3 Copies.

(a) Copies of the DEAR published in the FEDERAL REGISTER or Code of Federal Regulations may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Requests should reference the DEAR as Chapter 9 of Title 48. The Code of Federal Regulations is printed in paperback edition and updated annually. Requests for the CFR version of the DEAR should reference Chapter 9 of Title 48.

(b) Loose-leaf copies of the DEAR are distributed within DOE in accordance with a distribution list maintained by the Policy Office in the Procurement and Assistance Management Directorate, Headquarters.

901.105 OMB control numbers.

The Paperwork Reduction Act of 1980, Pub. L. 96-511, and the Office of Management and Budget's implementing regulations at 5 CFR Part 1320, require that reporting and recordkeeping requirements affecting 10 or more members of the public be cleared by that Office. Shown below are DEAR citations containing such requirements and their control numbers.

DEAR	Title	Control No.
913.505-2	Agency order form in lieu of Optional Forms 347 and 348.	1910-3000
915.406-5	Offeror representations and certifications.	1910-3100
917.72	Program opportunity notice for commercial demonstrations.	1910-3200
917.73	Program research and development (R&D) announcement.	1910-3200
919.708	Small business report	1910-3300
922-804-2(b)(2).	Affirmative action compliance requirements for construction.	1910-3400
927.402-3	Technical data certification	1910-3500
928-103-3	Payment bond	1910-3600
928.170	Fidelity bond	1910-3600
936.7301	Outline of agreement for rental of contractor-owned equipment.	1910-3700
945.508	Physical inventory	1910-3800
945.607-2	Recovering precious metals	1910-3800
945.608-2	Agency screening	1910-3800
949.505	Other termination clauses	1910-3900
952.204-2	Security requirements	1910-1800
952.204-70	Classification	1910-1800
952.204-71	Sensitive Foreign nations controls.	1910-1800
952.204-72	Disclosure of information	1910-1800
952.204-73	Foreign ownership, control, or influence over contractor (Representation).	1910-1800
952.204-74	Foreign ownership, control, or influence over contractor.	1910-1800
952.209-70	Organizational conflicts of interest—disclosure or representation.	1910-0800
952.209-71	Organizational conflicts of interest—general.	1910-0800
952.209-72	Organizational conflicts of interest—special clause.	1910-0800
952.212-71	Priorities, allocations and allotments for DOE atomic energy programs.	1910-4000
952.212-73	Cost and schedule control systems criteria.	1910-1400
952.215-70	Required subcontractor representations and certifications.	1910-4000
952.217-70	Acquisition of real property	1910-4000
952.219-9	Small business and small disadvantage business subcontracting plan.	1910-4000
952.223-71	Safety and health (Government-owned or leased facility).	1910-0300
952.223-72	Radiation protection and nuclear criticality.	1910-0300
952.223-74	Nuclear facility safety applicability.	1910-0300
952.223-75	Preservation of individual occupational radiation exposure records.	1910-0300
952.227-71	Patent rights—small business firms or nonprofit organizations.	1910-4000
952.227-71(h).	Utilization of subcontractor inventions report.	1910-4000
952.227-80	Technical data certification	1910-4000
952.227-81	Royalty payments certification	1910-4000
952.227-83	Identification of proprietary data	1910-4000
952.227-84	Notice of right to request patent waiver.	1910-0800
952.235-70	Key personnel	1910-4000
952.245-2	Government property (fixed-price contracts).	1910-4000
952.245-5	Government property (cost-reimbursement, time and material, or labor hour contracts).	1910-4000
952.247-70	Foreign travel	1910-2100
952.249-70	Termination clause for cost reimbursement architect-engineer contracts.	1910-4000
970.5203-2	Examination of records by comptroller general.	1910-4100
970.5204-1	Security	1910-1800
970.5204-2	Safety and health (Government-owned or leased.	1910-0300
970.5204-9	Accounts, records, and inspection.	1910-1700
970.5204-10	Foreign ownership, control, or influence over contractors.	1910-1800
970.5204-11	Changes	1910-4100
970.5204-12	Contractor's organization	1910-4100
970.5204-13	Allowable costs and fixed-fees (CPFF management and operating contracts).	1910-4100
970.5204-14	Allowable costs and fixed-fees (support contracts).	1910-4100
970.5204-19	Printing	1910-1300
970.5204-21	Property	1910-4100
970.5204-22	Contractor procurement	1910-4100
970.5204-23	State and local taxes	1910-4100
970.5204-24	Subcontractor's certificate of current cost or pricing data.	1910-4100
970.5204-26	Nuclear safety	1910-0300
970.5204-27	Consultant or other comparable employment services of contractor employees.	1910-4100
970.5204-29	Permits and licenses	1910-4100
970.5204-30	Notice of labor disputes	1910-4100
970.5204-31	Litigation and claims	1910-4100
970.5204-32	Requirement bonds and insurance—exclusive of Government property (cost-type contracts).	1910-4100
970.5204-33	Priorities, allocations and allotments.	1910-4100
970.5204-34	Sensitive foreign nations control.	1910-1800
970.5204-38	Special clause for procurement of construction.	1910-4100
970.5204-41	Preservation of individual occupational radiation exposure records.	1910-0300
970.5204-42	Key personnel	1910-4100
970.5204-45	Termination	1910-4100
970.5204-50	Cost and schedule control systems.	1910-1400

Subpart 901.2—Administration

901.201-1 The two councils.

(b) The DOE representative to the Civilian Agency Acquisition Council will be a staff member of the Policy Office, Procurement and Assistance Management Directorate, Headquarters, appointed for that purpose by the Procurement Executive.

(d) The Policy Office will be responsible for coordination with all interested Departmental elements regarding proposed FAR revisions and advocating revisions sought by DOE.

Subpart 901.3—Agency Acquisition Regulations

901.301 Policy.

(a) Acquisition policies and procedures will be issued in the DEAR by the Procurement Executive after appropriate coordination with other officials.

(b) Implementing procedures, instructions, and guides which are necessary to clarify or to implement the DEAR within DOE may be issued by the Heads of the Contracting Activities. Contracting activities have the authority to establish the review and approval levels for various acquisition actions, within their respective organizations, up to the dollar authority level delegated to that organization by the Procurement Executive provided the implementing procedures, instructions and guides:

(1) Are consistent with the policies and procedures contained in this regulation as implemented and supplemented from time to time;

(2) Follow the format, arrangement, and numbering system of this regulation; to the extent practicable, and

(3) Contain no material which duplicates, paraphrases, or is inconsistent with the contents of this regulation.

901.301-70 Acquisition letters.

From time to time the Procurement Executive may, after coordination with the General Counsel, issue advisory Acquisition Letters to furnish interim guidance to contracting activities.

901.301-71 Amendment of regulation.

This regulation may be amended from time to time by the Procurement Executive with appropriate concurrences from other officials (e.g, Counsel, and any other appropriate Headquarters offices) in accordance with 901.570.

901.301-72 Other issuances related to acquisition.

In addition to the FAR and DEAR, there are other issuances which deal with acquisition. Among these are the Federal Property Management Regulations, the DOE Property Management Regulations, and DOE Directives.

(a) The Federal Property Management Regulations, FPMR, are published by the General Services Administration to guide and govern the Federal agencies in matters pertaining to the management of property and records and other programs and activities of the type administered by GSA. The FPMRs are codified as Chapter 101 of Title 41 of the Code of Federal Regulations.

(b) The DOE Property Management Regulations, DOE-PMR, implement and supplement the FPMR regarding the utilization, management and disposition of personal property. The DOE-PMRs are codified as Chapter 109 of Title 41 of the Code of Federal Regulations.

(c) The DOE Directives System contains the policies and procedures governing the internal operation of the Department. Because of the need to involve the public through the rulemaking process of the Administrative Procedure Act, as explained at 901.5, such policies and procedures as may directly affect contractors or the general public will be published in the DEAR following the rulemaking procedures established by the Administrative Procedure Act and the DOE Organization Act, Pub. L. 95-91. Policies and procedures which are generally of interest to or used only by DOE personnel will be published in the DOE Directives System.

901.303 Codification and public participation.

(a) The DEAR is codified as Chapter 9 of Title 48 of the Code of Federal Regulations.

(b) Procedures for public participation are described at 901.5.

Subpart 901.4—Deviations From the FAR

901.402 Policy.

(a) Requests for authority to deviate from the provisions of the FAR or the DEAR shall be submitted in writing as far in advance as the exigencies of the situation will permit. Each request for deviation shall contain the following:

(1) A statement of the deviation desired, including identification of the specific paragraph number(s) of the FAR or DEAR;

(2) The reason why the deviation is considered necessary or would be in the best interest of the Government;

(3) If applicable, the name of the contractor and identification of the contract affected;

(4) A statement as to whether the deviation has been requested previously and, if so, circumstances of the previous request;

(5) A description of the intended effect of the deviation;

(6) A statement of the period of time for which the deviation is needed; and

(7) Any pertinent background information which will contribute to a full understanding of the desired deviation.

901.403 Individual deviations.

In individual cases, deviations from either the FAR or the DEAR will be authorized only when essential to effect a necessary acquisition or where special circumstances make such deviations clearly in the best interest of the Government. Heads of Contracting Activities (HCAs) or designees are authorized to approve deviations from the DEAR, except for cost principles, in individual cases within their delegated dollar authority, after coordination with Counsel and such other DOE personnel as required. No deviations from the FAR may be authorized at the local level. A copy of each deviation and its supporting documentation shall be provided to the Procurement Executive. Deviations, either in excess of an HCA's delegated dollar authority or involving the cost principles contained in Part 931, or any FAR deviation, shall not be made unless such action is authorized by the Procurement Executive after consultation with General Counsel and any other appropriate Headquarters office, on the basis of a written justification stating clearly the special circumstances involved. For deviations from policies and procedures or clauses involving patents, data and copyrights, the concurrence of the Assistant General Counsel for Patents shall be obtained as provided in Part 927.

901.404 Class deviations.

Where deviations from the FAR, or DEAR in classes of contracts, are considered necessary, requests for authority to deviate shall be submitted in writing to the Procurement Executive who will, after appropriate coordination with other officials (e.g., Counsel, and such other DOE personnel as required), consider the submission, and in the case of FAR deviations, consider the submission jointly with the Chairperson of the Civilian Agency Acquisition Council as appropriate. Class deviations to the FAR or the DEAR involving patents, data, and copyrights shall be forwarded to the Procurement Executive, Headquarters, via the Assistant General Counsel for Patents. Where circumstances preclude obtaining prior concurrence of the Chairperson of the Civilian Agency Acquisition Council, the Procurement Executive may authorize the deviation and subsequently inform the Chairperson of the Civilian Agency Acquisition Council of the deviation including the circumstances under which it was required.

Subpart 901.5—Agency and Public Participation

901.570 Rulemaking.

(a) Section 553(a)(2) of the Administrative Procedure Act (5 U.S.C. 553), provides an exception from the standard public rulemaking procedures to the extent that the rule involves a matter related to agency management or personnel or to public property, loans, grants, benefits or contracts. OFPP Policy Letter 83-2 requires rulemaking for substantive acquisition rules but allows significant discretion in the matter. However, notwithstanding either of these, section 501(b)(3) of the Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7191(b)(3)), provides that the exception shall not be available with respect to public property, loans, grants, or contracts within DOE. Accordingly, DEAR has been promulgated and may be revised from time to time in accordance with the rulemaking procedures of the Administrative Procedure Act and the DOE Organization Act. This procedure generally involves issuing a notice of proposed rulemaking inviting public comment, review and analysis of comments received, and publication of a final rule. The final rule includes a discussion of the public comments received and describes actions taken as a result of the comments.

(b) All acquisition rulemakings will be done either by or with the concurrence of the Policy Office, Procurement and Assistance Management Directorate, Headquarters and authorized for issuance by the Procurement Executive or his or her Deputy.

Subpart 901.6—Contracting Authority and Responsibilities

901.601 General.

Contracting authority vests in the Secretary of Energy. The Secretary has delegated this authority to the Procurement Executive. The Procurement Executive has redelegated this authority to the Heads of the Contracting Activities. These delegations are formal written delegations containing dollar limitations and conditions. Each HCA in turn makes formal contracting officer appointments within the contracting activity.

901.601-70 Responsibility of the Head of the Contracting Activity.

The Head of the Contracting Activity, as defined at FAR 2.1 as supplemented by 902.100 of this regulation, is responsible for the conduct of an effective and efficient acquisition program. Adequate controls shall be established to assure compliance with applicable laws, regulations, procedures, and the dictates of good management practices. Periodic reviews shall be conducted by qualified personnel, preferably assigned to positions other than in the particular acquisition office or portion thereof being reviewed, to determine the extent of adherence to prescribed policies, regulations, and good management practices, and to identify any needs for improvement, guidance and/or training.

901.602-3 Ratification of unauthorized commitments.

(b) (2) The Procurement Executive is authorized to ratify an unauthorized commitment.

(3) The ratification authority of the Procurement Executive in subparagraph (b)(2) of this section is delegated to the Heads of Contracting Activities (HCAs) for individual unauthorized commitments $25,000 or under. The ratification authority of the HCA is nondelegable.

(c) Limitations.

(7) *Procedures.* The following procedures shall be followed for ratification of unauthorized commitments:

(i) Whenever it is discovered that any person is performing or has performed work as a result of an unauthorized commitment, the Contracting Officer shall advise that person that the work is unauthorized and performance is at the person's own risk.

(ii) The Government representative who made the unauthorized commitment shall furnish the contracting officer, through the Director of the cognizant Program Office at the contracting activity, or comparable official, all records and documents concerning the commitment and a complete, written statement of facts, including, but not limited to, a statement as to why authorized procurement procedures were not used, why the contractor was selected, a list of other sources considered, description of work to be performed or products to be funished, estimated or agreed upon contract price, citation of appropriation available, a statement as to whether the contractor has commenced performance and status of work. To preclude recurrence, the Director of the Program Office will include in the package recommendations for corrective action. If the Government representative who made the unauthorized commitment is no longer available, appropriate program personnel shall provide the information described in this paragraph to the contracting officer, along with the name of the employee who made the commitment.

(iii) The contracting officer shall evaluate this information, make a determination with respect to reasonableness of price and recommend whether payment should be made (see FAR 1.602-3(c)), and forward the documentation to the HCA.

(iv) For individual unauthorized commitments $25,000 or less, local procedures may require legal counsel concurrence, but such concurrence is not a requirement of this subsection. The HCA is responsible for assuring the implementation and monitoring of a corrective action plan. A copy of each ratification action by an HCA, along with supporting documentation, shall be provided to the Director, Business Clearance Division, MA-441, Headquarters.

(v) For individual unauthorized commitments involving amounts in excess of $25,000, the HCA or designee will evaluate the information assembled pursuant to subsection 901.602-3(c)(7)(ii) above, including the corrective action plan, and, if the HCA concurs, forward the package with HCA concurrence to the Procurement Executive.

(vi) The Procurement Executive may ratify the unauthorized commitment after coordinating with the Office of General Counsel and, when deemed necessary, obtaining the concurrence of the Senior Program Official. The Procurement Executive or designee shall monitor the implementation of the corrective action plan.

(vii) If the Procurement Executive does not ratify the action, the file will be returned to the HCA with an explanation of the decision not to ratify.

(viii) If an unauthorized commitment is ratified, the supporting documentation will be included as part of the official contract file. If an unauthorized commitment is not ratified, the documentation will be maintained for audit purposes as a separate file by the cognizant contracting office.

[54 FR 27645, June 30, 1989]

901.603 Selection, appointment and termination of appointment.

901.603-1 General.

The DOE system for the selection, appointment, and termination of appointment of contracting officers is established in DOE Order 4200.4, Selection, Appointment, and Termination of Contracting Officers.

901.603-70 Modification of appointment.

To modify a contracting officer's authority, the present appointment shall be revoked and a new certificate issued.

901.603-71 Responsibility of other Government personnel.

(a) Responsibility for the decision of what to buy and when to buy rests with program and certain staff offices and the head of the agency or designee. Responsibility for determining how to buy, the conduct of the buying process, and execution of the contract rests with the contracting activity, the contracting officer in particular.

(b) Personnel not delegated contracting authority may not commit the Government, formally or informally, to any type of contractual obligation. However, program personnel who must use the contracting process to accomplish their programs, must support the contracting officer in ensuring that:

(1) Requirements are clearly defined and specified;

(2) Competitive sources are solicited, evaluated, and selected;

(3) Quality standards are prescribed and met;

(4) Performance or delivery is timely;

(5) Prices, estimated costs, and fees are reasonable; and

(6) Files are documented to substantiate the judgments, decisions, and actions taken.

[49 FR 11936, Mar. 28, 1984. Redesignated at 54 FR 27645, June 30, 1989]

901.603-72 Contracting officer's representatives.

(a) A contracting officer may designate other Government personnel to act as authorized representatives for such functions as technical monitoring, inspection, approval of shop drawings, testing, approval of samples, and other functions of a technical natural not involving a change in the scope, price, terms or conditions of the contract or order. Such designation shall be in writing and shall contain specific instructions as to extent to which the representative may take action for the contacting officer, but will hot contain authority to sign contract documents. The responsibilities and limitations of the contracting officer's representatives may be set forth in the contract or in a separate letter, a copy of which shall be furnished to the contractor.

(b) A person assigned to and performing primary duty within a contracting office, and who is under the supervision of a contracting officer, does not require designation as a representative to perform assigned duties. The contracting officer cannot authorize subordinates to sign any contract document or letter where the signature of a contracting officer is required.

[49 FR 11936, Mar. 28, 1984. Redesignated at 54 FR 27645, June 30, 1989]

PART 902—DEFINITIONS OF WORDS AND TERMS

Subpart 902.1—Definitions

Sec.
902.101 Definitions.

Subpart 902.2—Definitions Clause

902.200 Definitions clause.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

Subpart 902.1—Definitions

902.101 Definitions.

The following definitions are in addition to those stated in FAR 2.1.

"Acquisition Executive," as that term is defined in OMB Circular A-109, means the Assistant Secretary, Management and Administration. The Acquisition Executive, as contrasted to the Procurement Executive, is involved in monitoring the development of major systems and the review of their progress as they evolve through the major systems acquisition process. Details regarding internal major system acquisition procedures may be found in the DOE Directives.

"Contracting Activity" means a DOE organizational element which has authority to award contracts.

"Head of the Agency" means the Secretary, Deputy Secretary, or Under Secretary and, for acquisitions by the Federal Energy Regulatory Commission, the Chairman, Federal Energy Regulatory Commission.

"Head of the Contracting Activity (HCA)" means, in addition to the element specified in the FAR, a DOE Official who has met the following requirements: first, has been delegated authority to award contracts and appoint contracting officers by the Procurement Executive; and second, has been designated as an HCA. A partial listing of the duties specifically reserved to the HCA or designee includes:

(a) Authority to establish review and approval levels for contract actions within the organization, up to the dollar level delegated.

(b) Authority to approve deviations from the DEAR in accordance with 901.403.

(c) Authority to appoint contracting officers.

(d) Authority to make administrative determinations regarding withdrawals of bids before award in mistake-in-bid cases.

"Procurement Executive" means the individual appointed as such by the Head of the Agency pursuant to Executive Order 12352. The Director, Procurement and Assistance Management Directorate, has been appointed as the DOE Procurement Executive except for the activities of the Federal Energy Regulatory Commission (FERC). The Executive Director, FERC, functions as the Procurement Executive with respect to FERC acquisition activities. The FERC Procurement Executive's responsibilities are those described at paragraphs (a), (b), (c), (d), (f), (g), (h), (i) and (j) of this section. Duties of the Procurement Executive include:

(a) Prescribe and publish agency acquisition policies, regulations and procedures;

(b) Enter into, make determinations and decisions and take other actions, consistent with appropriate policies, regulations and procedures with respect to purchases, contracts, leases, sales agreements and other transactions, except those required by law or regulation to be made by other authority;

(c) Designate contracting officers and representatives thereof;

(d) Establish clear lines of contracting authority;

(e) Exercise priorities authority on behalf of the agency, in accordance with the provisions of the Defense Production Act of 1950 (50 U.S.C. App. 2071, *et seq.*), Defense Priorities and Allocations System Delegation 2, dated June 21, 1984, and applicable policies and regulations; and the Energy Conservation and Policy Act, Pub. L. 94-164.;

(f) Evaluate and monitor the agency's acquisition system performance;

(g) Manage and enhance career development of the acquisition work force;

(h) Examine, in coordination with the OFPP, the acquisition system to determine specific areas where Government-wide performance standards should be established and applied and participate in the development of Government-wide acquisition policies, regulations and standards;

(i) Determine areas for agency unique standards and develop unique agency-wide standards

(j) Appoint advocates for competition; and

(k) Certify to the agency head that the acquisition system meets approved standards.

"Senior Procurement Executive" as defined at FAR Subpart 2.1 is synonymous with the term "Procurement Executive" used in this chapter.

"Senior Program Official" is any of the individuals appointed as Secretarial Officers or Directors of DOE staff offices. (See DOE 1325.1A.)

[49 FR 11940, Mar. 28, 1984; 49 FR 38949, Oct. 2, 1984, as amended at 50 FR 12182, Mar. 27, 1985; 52 FR 38422, Oct. 16, 1987]

Subpart 902.2—Definitions Clause

902.200 Definitions clause.

As prescribed by FAR Subpart 2.2, insert the clause at FAR 52.202-1, Definitions, but modify it to limit the definition, at paragraph (a) of the clause, to encompass only the Secretary, Deputy Secretary, or Under Secretary of the Department of Energy and the Chairman, Federal Energy Regulatory Commission. The contracting officer shall also add a paragraph (d) (or (c) in case Alternate I is used), which defines "DOE" as meaning the United States Department of Energy and "FERC" as meaning the Federal Energy Regulatory Commission.

[50 FR 12183, Mar. 27, 1985]

PART 903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 903.1—Safeguards

Sec.
903.101 Standards of conduct.
903.101-3 Agency regulations.

Subpart 903.2—Contractor Gratuities to Government Personnel

903.203 Reporting suspected violations of the Gratuities clause.
903.204 Treatment of violations.

Subpart 903.3—Reports of Suspected Antitrust Violations

903.303 Reporting suspected antitrust violations.

Subpart 903.4—Contingent Fees

903.408-1 Responsibilities.

Subpart 903.5—Other Improper Business Practices

903.502 Subcontractor kickbacks.

Subpart 903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

903.603 Responsibilities of the contracting officer.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 11940, Mar. 28, 1984, unless otherwise noted.

Subpart 903.1—Safeguards

903.101 Standards of conduct.

903.101-3 Agency regulations.

Detailed rules applicable to the conduct of DOE employees are set forth in 10 CFR Part 1010. To ensure that contracting personnel are informed of the high standards to be met and that they maintain current knowledge of the standards of conduct, all contracting activities shall maintain a "Standards of Conduct Notebook for Acquisition and Assistance Personnel." The notebook will contain a copy of 10 CFR Part 1010 and any other DOE or local directives on standards of conduct. All contracting personnel and their supporting personnel shall certify they have read and understand the contents of the notebook by signing a certificate to that effect. This shall be done at least annually.

Subpart 903.2—Contractor Gratuities to Government Personnel

903.203 Reporting suspected violations of the Gratuities clause.

(a) Suspected violations of the Gratuities clause shall be reported to the Head of the Contracting Activity (HCA) in writing detailing the circumstances. The HCA will evaluate the report and if the allegations appear to support a violation the matter will be referred to the Procurement Executive for disposition.

903.204 Treatment of violations.

Apparent violations will be processed in accordance with the debarment and suspension rules set forth at Title 10, Part 1035, of the Code of Federal Regulations.

Subpart 903.3—Reports of Suspected Antitrust Violations

903.303 Reporting suspected antitrust violations.

(a) Potential anti-competitive practices, such as described in FAR 3.301, and antitrust law violations as described in FAR 3.303, evidenced in bids or proposals, shall be reported to the Office of General Counsel through the Head of the Contracting Activity with a copy to the Procurement Executive. The Office of General Counsel will provide reports to the Attorney General as appropriate.

[50 FR 12183, Mar. 27, 1985]

Subpart 903.4—Contingent Fees

903.408-1 Responsibilities.

(b) Each Standard Form 119 completed in connection with a DOE contract, together with other relevant information, shall be reviewed by Counsel prior to the initiation of appropriate action.

Subpart 903.5—Other Improper Business Practices

903.502 Subcontractor kickbacks.

(b) Contracting officers shall report suspected violations of the Anti-Kickback Act through the Head of the Contracting Activity, or designee, to the Office of General Counsel.

Subpart 903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

903.603 Responsibilities of the contracting officer.

(a) When the needs of the Government cannot be reasonably supplied by sources other than employees of the Government or sources which are substantially owned or controlled by Government employees, the contracting officer shall submit, through the HCA, a request to the Procurement Executive, with appropriate justification, for approval of an exception to the prohibitions contained in FAR 3.601.

PART 904—ADMINISTRATIVE MATTERS

Subpart 904.4—Safeguarding Classified Information Within Industry

Sec.
904.401 Definitions.
904.402 General.
904.403 Responsibilities of contracting officers.
904.404 Contract clause.

Subpart 904.6—Contract Reporting

904.601 Federal procurement data system.
904.601-70 Procurement and Assistance Data System (PADS).
904.601-71 Uniform Reporting System.

Subpart 904.7—Contractor Records Retention

904.702 Applicability.

Subpart 904.8—Contract Files

904.803 Contents of contract files.
904.804-1 Close out by the office administering the contract.
904.805 Disposal of contract files.

Subpart 904.70—Foreign Ownership, Control, or Influence Over Contractors

904.7000 Purpose.
904.7001 Applicability.
904.7002 Definitions.
904.7003 Disclosure of foreign ownership, control, or influence.
904.7004 Findings, determination, and contract award or termination.
904.7005 Solicitation provision and contract clause.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 11941, Mar. 28, 1984, unless otherwise noted.

Subpart 904.4—Safeguarding Classified Information Within Industry

904.401 Definitions.

"Classified Information" means any information or material that is owned by, produced by or for, or is under the control of the United States Government, and determined pursuant to provisions of Executive Order 12356, April 2, 1982 (47 FR 14874, April 6, 1982), or prior orders, or as authorized under the Atomic Energy Act of 1954, as amended, to require protection against unauthorized disclosure, and is so designated.

"Restricted Data" means data which is defined in section II, of the Atomic Energy Act of 1954, as amended, as "all data concerning: (1) Design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142."

904.402 General.

(a) The basis of DOE's security requirements is the Atomic Energy Act of 1954, as amended.

(b) *DOE security regulations.* DOE regulations concerning national security information are codified at 10 CFR Part 1045. Supplemental material is found in the DOE Directives. Foreign ownership, control, or influence over contractors as it relates to security is discussed at 904.70.

(c) *Special requirements regarding foreign release.* Statutory requirements to be observed in connection with the release of Restricted Data to foreign governments are contained in the Atomic Energy Act of 1954, sections 141 and 144.

(d) *Prohibition against the dissemination of certain unclassified information.* Section 148 of the Atomic Energy Act (42 U.S.C. 2168) prohibits the unauthorized dissemination of unclassified nuclear information with respect to the atomic energy defense programs pertaining to:

(1) The design of production facilities or utilization facilities;

(2) Security measures (including security plans, procedures, and equipment) for the physical protection of: (i) Production or utilization facilities, (ii) nuclear material contained in such facilities, or (iii) nuclear material in transit; or

(3) The design, manufacture, or utilization of any atomic weapon or component if the design, manufacture, or utilization of such weapon or component was contained in any information declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act.

(k) Further information on this subject may be found at 10 CFR Part 710.

904.403 Responsibilities of contracting officers.

(a) *Presolicitation Phase.* If access to Restricted Data may be required, security clearances shall be obtained as noted in DOE Order 5631.2.

(c) *Award Phase.* Contracts which may require the processing or storage of Restricted Data or Special Nuclear Material require application of the provisions of DOE Orders 5634.1; 5635.1; and 5632.2. DOE regulations relating to the protection of Restricted Data may also be found under 10 CFR Part 1016.

904.404 Contract clause.

(d) The security clauses to be used in DOE contracts are found at 952.204. They are:

(1) *Security, 952.204-2.* This clause is required in contracts under section 31 (research assistance) or 41 (ownership and operation of production facilities) of the Atomic Energy Act of 1954, as amended, and in other contracts and subcontracts, the performance of which involves or is likely to involve classified information. The DOE system is separate from that of the Department of Defense and the DEAR clause shall be used instead of that at FAR 52.204-2.

(2) *Classification, 952.204-70.* This clause is to be used in all contracts which involve classified information.

(3) *Sensitive foreign nation controls, 952.204-71.* This clause is required in unclassified research contracts which may involve making unclassified information about nuclear technology available to certain sensitive foreign nations. The contractor shall be provided at the time of award the listing of nations included in DOE 1240.2, Attachment 4, and any subsequent changes. (The attachment referred to in the clause shall set forth the applicable requirements of the DOE regulations on dissemination of unclassified published and unpublished technical information to foreign nations.)

(4) *Disclosure of information, 952.204-72.* This clause should be used in place of the clauses entitled "Security" and "Classification" in contracts with educational institutions for research work performed in their own institute facilities that are not likely to produce classified information.

[49 FR 11941, Mar. 28, 1984; 49 FR 38949, Oct. 2, 1984, as amended at 54 FR 27846, June 30, 1989]

Subpart 904.6—Contract Reporting

904.601 Federal procurement data system.

(c) DOE's data collection point is the Office of Procurement Support, Headquarters. The Office of Program Management is responsible for data collection and reporting by the Federal Energy Regulatory Commission.

[50 FR 12183, Mar. 27, 1985]

904.601-70 Procurement and Assistance Data System (PADS).

(a) The Procurement and Assistance Data System (PADS) is the Department of Energy's system for collection of Federal Procurement Data System (FPDS) data.

(b) DOE Order 1331.1A, entitled "Requirements and Procedures for the Procurement and Assistance Data System," requires that all data be entered into PADS within five (5) working days after the award or receipt of a subcontracting report in the following manner:

(1) Contracting activities shall report the information required by this subpart for new awards and modifications.

(2) For each prime contract action over the small purchase limit, contracting officers shall complete an Individual Procurement Action Report (IPAR), DOE F 4200.40, and submit it to their data entry point for input to the PADS system. Detailed information on completing IPAR forms is contained in the publication entitled "Handbook for Preparation of Individual Procurement Action Reports." A copy of each completed IPAR form shall be inserted in the pertinent contract file.

(3) Prime contract awards below the small purchase limit shall be reported either:

(i) Individually, by completion and submission of an IPAR; or

(ii) On a summary basis, by completion and submission of Standard Form 281, FPDS—Summary of Contract Actions of $10,000 or less. Summary reports shall be submitted within 15 calendar days after the end of each Federal fiscal quarter.

(4) Contracting officers shall assure that contractors whose contracts include the Small and Small Disadvantaged Business Subcontracting Plan clause, FAR 52.219-9, submit the required reports on Standard Form 294.

[49 FR 11941, Mar. 28, 1984; 49 FR 38949, Oct. 2, 1984, as amended at 50 FR 12183, Mar. 27, 1985; 52 FR 38422, Oct. 16, 1987]

904.601-71 Uniform Reporting System.

(a) The Uniform Reporting System (URS) is the Department of Energy's system for collection of uniform, timely, and valid information on cost, schedule, and technical performance of contracts and financial incentives (e.g., loan guarantee) arrangements. This subsection applies only to DOE contracts.

(b) The current version of DOE 1332.1A, Uniform Reporting System, of October 15, 1985 (Order) establishes the Uniform Reporting System. With the exception of special research contracts and management and operating contracts, this subsection requires that this Order, or any later version of the Order in effect on the effective date of the contract, be applied, as appropriate, to all DOE contracts, including inter-agency agreements for work for DOE. This subsection and the Order do not apply to special research contracts for which reporting requirements are prescribed in DEAR 917.7109 and 917.7113. In the case of management and operating contracts, see DEAR 970.0406 regarding application of the URS. Application of the URS to subcontractors is a matter for agreement between the prime contractor and the subcontractor based on the degree to which URS plans and reports are needed by the prime to fulfill the requirements of the prime contract.

(c) DOE 1332.1A provides a compendium of standard reports, procedures, and terminology from which a program or project manager selects those applicable to a specific contractual effort. Reporting requested from contractors or subcontractors shall in all cases be limited to only that information which is essential for effective management control. To apply this Order to a contract the contracting officer shall include the clause at DEAR 952.212-72 in the contract. DOE specifies which management planning and status reporting requirements pertain to a contract by use of DOE Form 1332.1, Reporting Requirements Checklist, which is included in each solicitation and contractual agreement.

[52 FR 28717, Aug. 3, 1987]

Subpart 904.7—Contractor Records Retention

904.702 Applicability.

(b) Contracts containing the Safety and Health clause at 952.223-71, the Radiation Protection and Nuclear Criticality clause at 952.223-72, or the Nuclear Safety clause at 952.223-74 must also include the Preservation of Individual Occupational Radiation Exposure Records clause at 952.223-75 which will necessitate retention of records in accordance with schedules contained in Chapter V of DOE Order 1324.2, and any pertinent superseding provisions, rather than those found at FAR 4.7. These schedules are required by DOE, pursuant to an agreement with the General Accounting Office, in situations where prudence dictates longer retention periods for records involving employee health matters.

Subpart 904.8—Contract Files

904.803 Contents of contract files.

(a) (29) The record copy of the Individual Procurement Action Report shall be included in the file section containing procurement management reports.

904.804-1 Closeout by the office administering the contract.

(a) The Head of the Contracting Activity shall ensure that necessary procedures and milestone schedules are established to meet the requirements of FAR 4.804-1, and that resources are applied to effect the earliest practicable deobligation of excess funds and the timely closeout of all contract files which are physically completed or otherwise eligible for closeout action.

(b) Quick closeout procedures for cost reimbursable and other than firm fixed price type contracts are covered under 942.708.

904.805 Disposal of contract files.

Contract files shall be disposed of in accordance with applicable DOE Order 1324.2.

Subpart 904.70—Foreign Ownership, Control, or Influence Over Contractors

904.7000 Purpose.

This subpart sets forth the Department of Energy policies and procedures regarding foreign ownership, control, or influence (FOCI) over contractors. The procedures are designed to protect against an undue risk to the common defense and security which may result if classified information or special nuclear material is made available to DOE contractors or subcontractors who are owned, controlled, or influenced by foreign governments, individuals, or organizations. The procedures require certain offerors/ bidders and contractors/subcontractors to submit information which will help DOE to determine whether award of a contract to a firm, or continued performance of a contract by a firm, may pose an undue risk to the common defense and security because of FOCI over the offeror/bidder or contractor/ subcontractor.

904.7001 Applicability.

The provisions of this subpart shall apply to all offerors/bidders, contractors, and subcontractors who will or do have access to classified information or a significant quantity of special nuclear material as defined in 10 CFR Part 710. In this subpart, the term "contractor" shall also mean subcontractor at any tier, the term "contract" shall also mean subcontract at any tier, and the term "special nuclear material" shall also mean significant quantity of special nuclear material as defined in 10 CFR Part 710.

904.7002 Definitions.

"Foreign interest" means any of the following:

(1) Foreign government or foreign government agency or instrumentality thereof;

(2) Any form of business enterprise organized under the laws of any country other than the United States or its possessions;

(3) Any form of business enterprise organized or incorporated under the laws of the U.S., or a State or other jurisdiction within the U.S. which is owned, controlled, or influenced by a foreign government, agency, firm, corporation, or person, or

(4) Any person who is not a U.S. citizen.

"Foreign ownership, control, or influence" means the situation where the degree of ownership, control, or influence over an offeror/bidder or a contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or special nuclear material may possibly result.

"Contracting Officer" means the DOE contracting officer.

904.7003 Disclosure of foreign ownership, control, or influence.

(a) If a contract requires a contractor to have access to classified information or a significant quantity of special nuclear material, the DOE must determine whether access to the information or material by a contractor who is or may be subject to FOCI may pose an undue risk to the common defense and security before a contract can be awarded.

(b) If during the performance of a contract, the contractor comes under FOCI, then the DOE must determine whether any further access to the classified information or special nuclear material may pose an undue risk to the common defense and security through the possible compromise of that information or material. If the DOE determines that such a threat or potential threat exists, the contracting officer shall consider the alternatives of negotiating an acceptable method of isolating the foreign interest which owns, controls, or influences the contractor or terminating the contract.

(c) It is essential for the DOE to obtain information about FOCI which is sufficient to help the Department determine whether award of a contract to a person or firm, or the continued performance of a contract by a person or firm, may pose undue risk to the common defense and security. Therefore, the provision specified at 952.204-73 shall be included in solicitations that involve offerors/bidders or contractors that are subject to 904.7001.

(d) The contracting officer shall not award or extend any contract subject to this subpart, exercise any options under a contract, modify any contracts subject to this subpart, or approve or consent to a subcontract subject to this subpart unless: (1) The contractor provides the information required by the solicitation provision at 952.204-73, or (2) the contractor certifies that it has previously submitted the information requested in 952.204-73 as part of a facility security clearance and that this information is accurate, complete, and current, and (3) the contracting officer has made a positive determination in accordance with 904.7004.

904.7004 Findings, determination, and contract award or termination.

(a) Based on the information disclosed by the offeror/bidder or contractor, and after consulting with the DOE Office of Safeguards and Security, the contracting officer must determine that award of a contract to an offeror/bidder or continued performance of a contract by a contractor will not pose an undue risk to the common defense and security. The contracting officer need not prepare a separate finding and determination addressing FOCI; however, the memorandum of negotiation shall include a discussion of the applicability of this subpart and the resulting determination.

(b) In those cases where FOCI does exist, and the DOE determines that an undue risk to the common defense and security may exist, the offeror/bidder or contractor shall be requested to propose within a prescribed period of time a plan of action to avoid or mitigate the foreign influences by isolation of the foreign interest.

(c) The types of plans that a contractor can propose are: measures which provide for physical or organizational separation of the facility or organizational component containing the classified information or special nuclear material; modification or termination of agreements with foreign interests; diversification or reduction of foreign source income; assignment of specific security duties and responsibilities to board members or special executive level committees; or any other actions to negate or reduce FOCI to acceptable levels. The plan of action may vary with the type of foreign interest involved, degree of ownership, and information involved so that each plan must be negotiated on a case by case basis. If the offeror/bidder or contractor and the DOE cannot negotiate a plan of action that isolates the offeror/bidder or contractor from FOCI satisfactory to the DOE, then the offeror/bidder shall not be considered for contract award and affected existing contracts with a contractor shall be terminated.

904.7005 Solicitation provision and contract clause.

(a) The contracting officer shall insert the representation at 952.204-73, Foreign Ownership, Control, or Influence Over Contractor, in all solicitations for contracts subject to 904.7001.

(b) The contracting officer shall insert the clause at 952.204-74, Foreign Ownership, Control, or Influence Over Contractor, in new contracts and contract modifications to existing contracts subject to 904.7001.

SUBCHAPTER B—ACQUISITION PLANNING

PART 905—PUBLICIZING CONTRACT ACTIONS

Subpart 905.2—Synopses of Proposed Contract Actions

Sec.

905.205 Special situations.

Subpart 905.3—Synopses of Contract Awards

905.303 Announcement of contract awards.

Subpart 905.4—Release of Information

905.403 Requests from Members of Congress.
905.403-70 Required notices of award.
905.404-1 Release procedures.

Subpart 905.5—Paid Advertisements

905.502 Authority.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

Subpart 905.2—Synopses of Proposed Contract Actions

905.205 Special situations.

(a) *Research and development (R&D) advance notices.* If, as a result of an R&D Sources-Sought Synopsis, a subsequent synopsis is issued, the latter synopsis shall contain information regarding the earlier synopsis, and identify the special qualifications, expertise, experience, or facilities deemed necessary to perform the work satisfactorily. The purpose of this added notice is to alert potential sources that their proposal preparation effort as well as the Government evaluation effort will be unnecessarily expended if they do not possess these special qualifications.

[49 FR 11943, Mar. 28, 1984; 50 FR 12183, Mar. 27, 1985]

Subpart 905.3—Synopses of Contract Awards

905.303 Announcement of contract awards.

(a) *Public announcement.* See 905.403-70 for procedures to be followed in DOE as pertains to notices of award.

[50 FR 12183, Mar. 27, 1985]

Subpart 905.4—Release of Information

905.403 Requests from Members of Congress.

(a) *Individual requests.* In addition to having access to the information available to the general public, Members of Congress shall, upon their request, be given full and detailed information regarding any particular Departmental acquisition. The information provided shall be fully responsive to the member's request unless such a response would disclose classified matter, information not to be released pursuant to law, business confidential information or information which would be prejudicial to the competitive process. The contracting officer shall promptly consult with appropriate specialists such as security analysts or legal counsel and the Office of Congressional Affairs to determine whether circumstances exist which will allow the release of additional information. In such instances, the Congressional requestor shall be provided an interim reply furnishing the information which is readily releasable. The interim reply shall set forth the reasons which preclude release of any requested material and describe generally what steps, if any, are being taken to make such information available.

[49 FR 11943, Mar. 28, 1984, as amended at 50 FR 12183, Mar. 27, 1985]

905.403-70 Required notices of award.

The Office of Congressional Affairs, Headquarters, is responsible for advising Members of Congress regarding Departmental activities likely to have an impact on their constituents. To facilitate this advice, contracting officers shall notify the Office of Congressional Affairs regarding pending awards for significant new starts or modifications significantly expanding the previous scope of a contract. The transmittal of such notices to the Office of Congressional Affairs shall be as follows:

(a) Notice of awards of $500,000 or greater, but less than $1,000,000 shall be forwarded 48 hours prior to the time of contract execution.

(b) Notice of source selection for a contemplated award of $1,000,000 or greater shall be forwarded 48 hours prior to the public announcement of the source selection. Such notices need not be duplicated at time of award.

(c) Notice of awards of $50,000 or greater, under Special Research Contracts as described at 917.71, shall be forwarded 48 hours prior to the time of contract execution.

[50 FR 12183, Mar. 27, 1985]

905.404-1 Release procedures.

(a) *Application.* Offices contemplating the release of long range acquisition planning estimates shall coordinate with the Office of Procurement Support, Procurement and Assistance Management Directorate, Headquarters, in advance of the release of such planning estimates.

[49 FR 11943, Mar. 28, 1984]

Subpart 905.5—Paid Advertisements

905.502 Authority.

(a) *Newspapers.* When it is deemed necessary to use paid advertisements in newspapers and trade journals, written authority for such publication shall be obtained from the Head of the Contracting Activity or designee.

[49 FR 11943, Mar. 28, 1984]

PART 906—COMPETITION REQUIREMENTS

Subpart 906.1—Full and Open Competition

Sec.
906.102 Use of competitive procedures.

Subpart 906.2—Full and Open Competition After Exclusion of Sources

906.202 Establishing or maintaining alternative sources.

Subpart 906.3—Other Than Full and Open Competition

906.302 Circumstances permitting other than full and open competition.
906.302-70 Otherwise authorized by law.

Sec.
906.303 Justifications.
906.303-1 Requirements.
906.303-70 Exemption.
906.304 Approval of the justification.

Subpart 906.5—Competition Advocates

906.501 Requirement.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 50 FR 12183, Mar. 27, 1985, unless otherwise noted.

Subpart 906.1—Full and Open Competition

906.102 Use of competitive procedures.

(d) Other competitive procedures.

(1) Professional architect-engineer services shall be negotiated in accordance with Subpart 936.6 and FAR Subpart 36.6.

(4) Competitive selection of research proposals for award received in response to a Program Research and Development Announcement (See Subpart 917.73 and Part 935).

(5) Competitive selection for award of proposals offered in response to program opportunity notices (See Subpart 917.72).

Subpart 906.2—Full and Open Competition After Exclusion of Sources

906.202 Establishing or maintaining alternative sources.

(b)(1) Every proposed contract action under the authority of FAR 6.202(a) shall be supported by a determination and finding (D&F) signed by the Procurement Executive.

Subpart 906.3—Other Than Full and Open Competition

906.302 Circumstances permitting other than full and open competition.

906.302-70 Otherwise authorized by law.

(a) *Authority.* (1) The Atomic Energy Act of 1954, as amended, provides in section 162 that the President may, in advance, exempt any specific action of the Department of Energy in a particular matter carried out under the authority of the Atomic Energy Act of 1954, as amended, from the provisions of law relating to contracts whenever it is determined that such action is essential in the interest of common defense and security.

(2) Pursuant to the Federal Property and Administrative Services Act (40 U.S.C. 474(13)), nothing in the Federal Property and Administrative Services Act, as amended, shall impair or affect any authority or programs authorized under the Atomic Energy Act of 1954, as amended.

906.303 Justifications.

906.303-1 Requirements.

(a) The justification for noncompetitive acquisition shall examine the reasons for the acquisition being other than a full and open competition and shall contain in the first sentence of the justification an appropriate recommendation (e.g., I recommend that negotiations be conducted only with (name and entity) for the supplies or services described herein). In accordance with FAR 6.303-1 each justification shall set forth enough facts and circumstances to clearly and convincingly establish that full and open competition would not have been feasible or practicable. A justification for noncompetitive acquisition exceeding $1,000,000, or such lower dollar amount as counsel may determine, shall be submitted by the initiator to Counsel, at the Headquarters or field location of the initiator, for concurrence prior to forwarding to the contracting officer. Procedural guidance is provided in internal DOE Directives. For small purchases the justification for other than full and open competition should be in accordance with small purchase procedures.

906.303-70 Exemption.

The provisions of FAR 6.303-1 do not apply to Special Research Contracts and extensions thereof entered into under DEAR 917.71, which are subject to separate justification.

[54 FR 27646, June 30, 1989]

906.304 Approval of the justification.

(c) Class justifications within the delegated authority of a Head of the Contracting Activity may be approved for:

(1) Contracts for electric power or energy, gas (natural or manufactured), water, or other utility services when such services are available from only one source;

(2) Contracts under the authority cited in FAR 6.302-4 or 6.302-5; or

(3) Contracts for educational services from nonprofit institutions. Class justifications for classes of actions that may exceed $10,000,000 require the approval of the Procurement Executive.

Subpart 906.5—Competition Advocates

906.501 Requirement.

The Secretary of Energy has delegated the authority for appointment of the agency and contracting activity competition advocates to the Procurement Executive. The Procurement Executive has delegated authority to the Head of the Contracting Activity to appoint contracting activity competition advocates. Procedural guidance is provided in internal DOE Directives.

PART 907—ACQUISITION PLANNING

Subpart 907.1—Acquisition Plans

Sec.
907.102 Policy.

Subpart 907.3—Contractor Versus Government Performance

907.307 Appeals.

Subpart 907.4—Equipment Lease or Purchase

907.401 Acquisition considerations.
907.402-70 Purchase versus lease comparison.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 11944, Mar. 28, 1984, unless otherwise noted.

Subpart 907.1—Acquisition Plans

907.102 Policy.

Acquisition plans are required as an element of project management plans which are required for major system acquisitions and major projects. The 5700 Series of DOE Directives establish the project management system which controls the planning and administration of major projects. This project management system calls for the preparation of project management plans which have as an annex the advance acquisition plan. Acquisition plans will be developed for other acquisitions when the potential benefit justifies their development.

Subpart 907.3—Contractor Versus Government Performance

907.307 Appeals.

An appeal of a decision to convert to contract or to continue in-house performance may be made by an affected party. Appeals shall be made in writing, be based only on specific alleged material deviation (or deviations),from OMB Circular A-76, and be supported by appropriate documentation. Appeals must be delivered within 15 working days of the announced decision, to the contracting officer. The contracting officer shall process any such appeal in accordance with internal Departmental procedures.

Subpart 907.4—Equipment Lease or Purchase

907.401 Acquisition considerations.

(c) The factors in FAR 7.401 (a) and (b), the guidelines prescribed in FPMR 101-25.5 and 907.402-70 of this chapter for making purchase or lease determinations shall be applied to the acquisition of all types of equipment. These factors and guidelines shall be used in making purchase versus lease determinations at time of original acquisition, when lease renewals are being considered, or at other times as circumstances warrant.

(d) Contracting officers shall assure the use of applicable purchase versus lease factors and guidelines in all acquisition and supply operations under their jurisdiction.

(e) Excess lists shall be consulted prior to leasing equipment in both original and renewal leasing actions. Also, leased equipment shall be offered for utilization by other DOE offices and DOE contractors prior to release whenever an accumulated credit toward purchase of the equipment will be lost.

(f) Unavailability of funds is not adequate justification for a decision to lease when purchase is indicated by a purchase versus lease comparison to be the more economical course of action. In such circumstances, it it essential that every effort be made to follow the purchase course of action. This is true both with respect to those studies made at the time leases are renewed or when other circumstancs warrant.

907.402-70 Purchase versus lease comparison.

(a) A comparative cost analysis of the alternative methods of acquisition (i.e., purchase, lease, or lease with option to purchase or any other legally acceptable method) shall be performed to determine which method shall provide the Government with the lowest overall cost (price and other factors considered), over the life of the equipment. The method chosen shall be that which offers the greatest advantage to the Government under the circumstances which pertain to each situation.

(b) Responsibilities of acquisition officials, head of program offices, and controller and finance divisions are as follows:

(1) *Acquisition officials:* (i) Contracting officers shall assure the use of applicable purchase versus lease guidelines in all acquisition and supply operations under their jurisdiction.

(ii) Maintain all purchase versus lease analyses and studies, and other pertinent data used to support administrative actions taken.

(2) *Heads of Program Offices:* Prepare comparative cost analyses for alternative methods of equipment acquisition and submit to the contracting officer.

(3) *Controller and Finance Divisions:* Provide financial policy guidance and assistance to the program offices in preparing comparative cost analyses.

(c) A purchase or lease determination supported by a comparative cost analysis is essential to the equipment acquisition process. To develop a comparative cost analysis properly, it is necessary to bring together "overall costs" of the equipment over the stated life of the equipment. Overall costs shall include, but not be limited to, cost elements as purchase cost, rental cost, lease cost, maintenance cost for purchased equipment, site preparation cost and installation cost. In performing a comparative cost analysis of the alternative methods of acquisition, it is necessary to give consideration to equipment life and residual value.

(1) The cost of equipment for the stated equipment life should be calculated for each acquisition method offered. Examples of plans are:

(i) *Purchase*—Outright purchase after installation and acceptance of equipment.

(ii) *Lease with Purchase Option*—Lease with option to purchase at predetermined intervals of time. The purchase price is usually reduced by subtracting rental credits as set forth in the offeror's proposal.

(iii) *Long Term Lease*—Such plans may provide multi-year leasing at determinable prices where the agency exercises a renewal option at the end of each fiscal year.

(iv) *Lease-to-Ownership Plan or Lease with Title Tranfer Plan*—A plan whereby title transfers after payment of *n* months of rental, but usually with no obligation, or less obligation, to continue to lease than in the installment purchase plan described below.

(v) *Installment Purchase Plan*—A plan whereby the Government exercises an option to purchase the equipment upon payment of *n* months of payments. It is frequently offered as a fixed term installment plan usually for 36 or 60 months in which the Government either is granted title immediately, or title is passed at the end of the contract.

(2) Equipment life, which is a forecast or projection of the period of time which begins with the installation of the equipment and ends when the requirement for the equipment is terminated, is based upon requirements which should be stipulated in the solicitation document. Equipment life is not synonymous with the actual life of the equipment.

(3) Usually, at the end of the stated equipment life, the equipment still has some residual value to the Government. This value may reflect the fact that the initial using activity may well keep the equipment longer than planned or some other Government activity may reutilize the equipment. The future lease payments saved, as well as the resale value of the equipment at the end of the stated equipment life, affect residual value. The residual value varies with each component (item) of equipment and its activity. However, it is generally expected that after a five-year equipment life the equipment should still be worth approximately 20-30% of the purchase price and after eight years, about 10%. The "purchase price" is the lowest evaluated purchase price offered by a responsible and responsive offeror. Instead of the straight purchase price, the sum of all invoice payments to be made to the Contractor may be used as the basis for this calculation. Any procurement option (e.g., Purchase, Lease-to-Ownership, etc.) that results in the Government owning the system(s) will have the residual value deducted from the systems life cost for evaluation purposes.

(4) Care should be taken during negotiations to ensure that the Government retains accrued credits and/or equity under any lease or installment purchase plan should the agency requirement cease or funds no longer be available. It is desirable to negotiate for the transfer of accrued credits to GSA should this case arise, so that GSA can find another user and retain the equity and any purchase option credits. At least a 90 day transfer plan should be available. The negotiator also has to be careful that equipment discontinuance is not hampered by restrictions on when the equipment can be dropped from the plan, or restrictions on the adding of new equipment. Ideally, the contract should contain no penalities for cancellation at the end of each fiscal year. It is imperative, however, that statutory "anti-deficiency" restraints be considered before entering into any multi-year lease or installment plan contracts.

(5) Particular caution should be exercised in entering into a lease-to-ownership or installment purchase plan because often the problems of ownership such as risk of loss or damage, taxes and insurance immediately fall on the Government and hence are avoided by the contractor. These plans offer real profit advantages to a contractor when they can pass the costs and risks on to the Government. Accordingly, since the offeror does not have to include such contingencies in his pricing, commensurate price reductions must be a part of the negotiation objectives under these conditions.

PART 908—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 908.8—Acquisition of Printing and Related Supplies

Sec.
908.802 Policy.

Subpart 908.11—Leasing of Motor Vehicles

908.1100 Scope of subpart.
908.1102 Presolicitation requirements.
908.1104 Contract clauses.
908.1170 Leasing of fuel-efficient vehicles.

Subpart 908.70—Use of Excess Materials From GSA Inventories

908.7001 Use of excess materials from General Services Administration inventories.

Subpart 908.71—Acquisition of Special Items

908.7100 Scope of subpart.
908.7101 Motor vehicles.
908.7101-1 Scope of section.
908.7101-2 Consolidated acquisition of new vehicles by General Services Administration.
908.7101-3 Direct acquisition.
908.7101-4 Replacement of motor vehicles.
908.7101-5 Used vehicles.
908.7101-6 Acquisition of fuel-efficient vehicles.
908.7101-7 Government license tags.
908.7102 Aircraft.
908.7103 Office machines.
908.7104 Office furniture and furnishings.
908.7105 Filing cabinets.
908.7106 Security cabinets.
908.7107 Alcohol.
908.7108 Helium.
908.7109 Fuels and packaged petroleum products.
908.7110 Coal.
908.7111 Arms and ammunition.
Sec.
908.7112 Materials handling equipment replacement standards.
908.7113 Calibration services.
908.7114 Wiretapping and eavesdropping equipment.
908.7115 Forms.
908.7116 Electronic data processing tape.
908.7117 Tabulating machine cards.
908.7118 Rental of post office boxes.
908.7119—908.7120 [Reserved]
908.7121 Special materials.

Subpart 908.72—Use of Acquisition and Supply Management Support Services at the Nevada Test Site

908.7200 Scope of subpart.
908.7201 Policy.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 11945, Mar. 28, 1984, unless otherwise noted.

Subpart 908.8—Acquisition of Printing and Related Supplies

908.802 Policy.

(b) The Joint Committee on Printing, Congress of the United States periodically publishes "Government Printing and Binding Regulations." These regulations and DOE Order 1340.1A, Chapter VI, "Printing and Related Activities," govern the acquisition, use, and disposal of printing. Inclusion of printing requirements (limited exceptions are set forth in paragraphs 35-2 through 35-4 of the Government Printing and Binding Regulations) in contracts for supplies and services is prohibited unless specifically approved by the Director, Office of Administrative Services, Headquarters. Contracting officers shall insert the clause at 952.208-70.

[49 FR 11945, Mar. 28, 1984; 49 FR 38949, Oct. 2, 1984]

Subpart 908.11—Leasing of Motor Vehicles

908.1100 Scope of subpart.

This subpart prescribes procedures for the leasing, from commercial concerns, by DOE offices and its authorized contractors, of motor vehicles that comply with Federal Motor Vehicle Safety Standards and applicable

State motor vehicle safety regulations. It does not apply to motor vehicles leased outside the United States. Motor vehicle acquisition policies are at 908.7101.

908.1102 Presolicitation requirements.

(a)(4) Commercial vehicle lease sources may be used only when the General Services Administration (GSA) has advised that it cannot furnish the vehicle(s) through the Interagency Motor Pool System and it has been determined that the vehicle(s) are not available through the GSA Consolidated Leasing Program.

908.1104 Contract clauses.

(e) The clause at 952.208-7, Tagging of Leased Vehicles, shall be inserted whenever a vehicle(s) is to be leased over 60 days, except for those vehicles exempted by FPMR 41 CFR 101-38.6.

908.1170 Leasing of fuel-efficient vehicles.

(a) All sedans and station wagons and certain types of light trucks, as specified by GSA, that are acquired by lease for 60 continuous days or more for official use by DOE or its authorized contractors, are subject to the requirements of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94-163 and of Executive Order 12003 and subsequent implementing regulations. Accordingly, the Director of Administration and Heads of Contracting Activities shall submit annually to the Director, Property and Equipment Management Division, Office of Policy, Procurement and Assistance Management Directorate, Headquarters, for approval, a forecast of plans for the lease of such vehicles during the fiscal year. Such forecast shall be submitted so as to arrive at Headquarters on or before December 1 of each year.

(b) Two copies of each proposal/request to commercially lease such vehicles shall also be forwarded to the Director, Property and Equipment Management Division, Office of Policy, Procurement and Assistance Management Directorate, Headquarters, for review and certification/approval prior to submission to GSA under the Consolidated Lease Program or execution of commercial lease agreements. All such documentation will be reviewed by this official and a determination made as to conformance with applicable annual forecasts and pertinent public laws and their implementations. (See DOE-PMR 41 CFR 109-38.13.)

(c) Leased vehicles will meet the miles-per-gallon criteria of, and be incorporated in, the approved plan of the fiscal year in which leases are initiated, reviewed, extended, or increased in scope. Vehicle leases will specify the vehicle model type to be provided.

[49 FR 11945, Mar. 28, 1984; 49 FR 38949, Oct. 2, 1984]

Subpart 908.70—Use of Excess Materials From GSA Inventories

908.7001 Use of excess materials from General Services Administration inventories.

(a) It is the policy of DOE to comply with the provisions of the Federal Property Management Regulations 41 CFR Part 101-14, National Defense Stockpile, as supplemented from time to time by FPMR Bulletins.

(b) Section 328.2 of Defense Mobilization Order II provides that "Under such policies and procedures as the Administrator of General Services may prescribe, Government agencies which directly or indirectly use strategic and critical materials shall fulfill their requirements through the use of materials in Government inventories that are excess to the needs thereof."

(c) DOE offices shall fulfill their requirements for strategic and critical materials through use of the excess strategic and critical materials in the GSA inventories.

(d) General Services Administration (DS), Washington, DC 20406, should be contacted directly for any detailed information concerning specifications, prices, and methods of placing the order.

Subpart 908.71—Acquisition of Special Items

908.7100 Scope of subpart.

This subpart sets forth requirements and procedures for the acquisition of special items by DOE and contractors authorized to use special sources of supply to the extent indicated herein.

908.7101 Motor vehicles.

908.7101-1 Scope of section.

Acquisitions by purchase of motor vehicles shall be in accordance with this section.

908.7101-2 Consolidated acquisition of new vehicles by General Services Administration.

(a) New vehicles shall be procured in accordance with FPMR 41 CFR 101-25.304, 101-26.501, and 101-38.13, and DOE-PMR 41 CFR 109-25.304, 109-38.13, and 109-38.51.

(b) Orders for all motor vehicles shall be submitted on GSA Form 1781, Motor Vehicle Requisition—Delivery Order—Invoice, in accordance with FPMR 41 CFR 101-26.501. Requisitions for sedans, station wagons, and certain light trucks as specified by GSA, should contain a certification that the acquisition is in conformance with Pub. L. 94-163, and Executive Order 12003 and 12375 and subsequent implementations.

(c) The schedule of dates for submission of orders is contained in FPMR 41 CFR 101-26.501-4. Heads of Contracting Activities shall consolidate and submit their requirements for passenger automobiles early in the fiscal year. Requisitions for sedans, station wagons and certain types of light trucks shall be submitted through Headquarters as outlined in 908.7101-6. Requisitions for all other types of vehicles shall be submitted directly to GSA.

[49 FR 11945, Mar. 28, 1984; 49 FR 38949, Oct. 2, 1984]

908.7101-3 Direct acquisition.

Vehicles may be acquired by DOE activities directly rather than through GSA when a waiver has been granted by GSA. A copy of the activity's request to GSA for a waiver shall be forwarded to the Director, Property and Equipment Management Division, Office of Policy, Procurement and Assistance Management Directorate, Headquarters. In those cases involving general purpose vehicles where GSA refuses to grant a waiver and where it is believed that acquisition through GSA would adversely affect or otherwise impair the program, authority for direct acquisition shall be obtained from the above-mentioned Headquarters official, prior to acquisition. In the acquisition of special purpose vehicles for use by DOE and its authorized contractors, the Head of the Contracting Activity may authorize direct purchases. The purchase price for sedans and station wagons, shall not exceed any statutory limitation in effect at the time the acquisition is made. (See DOE-PMR 41 CFR 109-38.5102-4).

[49 FR 11945, Mar. 28, 1984; 49 FR 38950, Oct. 2, 1984]

908.7101-4 Replacement of motor vehicles.

(a) The replacement of motor vehicles shall be in accordance with the replacement standards prescribed in FPMR 41 CFR 101-38.9 and DOE-PMR 41 CFR 109-38.9.

(b) Heads of Contracting Activities may arrange to sell, as exchange sales, used motor vehicles being replaced and to apply the proceeds to the purchase of similar new vehicles. However, in the event personnel are not available to make such sales, or it is in the best interest of the DOE office, GSA may be requested to sell the used vehicles.

908.7101-5 Used vehicles.

Normally, DOE does not purchase or authorize contractors to purchase used vehicles. However, Heads of Contracting Activities may authorize the purchase of used vehicles where justified by special circumstances; e.g., when new vehicles are in short supply, the vehicles are to be used for experimental or test purposes, or the vehicles are acquired from exchange sale. In accordance with DOE-PMR 41 CFR 109-38.5102, the statutory passenger vehicle allocation requirements for DOE shall apply to any purchase of used vehicles except in the case of vehicles to be used exclusively for experimental or test purposes.

[49 FR 11945, Mar. 28, 1984; 49 FR 38950, Oct. 2, 1984]

908.7101-6 Acquisition of fuel-efficient vehicles.

(a) All purchases of sedans and station wagons, and certain types of light trucks as specified by GSA, are subject to the requirements of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94-163, and of Executive Orders 12003 and 12375 and subsequent implementing regulations. Accordingly, the Director of Administration and Heads of Contracting Activities will submit annually to the Director, Property and Equipment Management Division, Office of Policy, Procurement and Assistance Management Directorate, Headquarters for approval, a forecast of plans for the purchase of such vehicles during the fiscal year. Such forecast shall be submitted so as to arrive at Headquarters on or before December 1 of each year. Additionally, the original and 2 copies of requisitions (GSA form 1781) for purchase of such vehicles shall also be forwarded to the above official for review and certification/approval prior to submission to GSA. All such documentation will be reviewed by this official and a determination made as to conformance with applicable annual forecasts and pertinent public laws and their implementations. (See DOE-PMR 41 CFR 109-38.13.)

(b) Sedans, station wagons, and light trucks requisitioned according to an approved forecast, but not contracted for by GSA until the subsequent fiscal year, will be included in the acquisition plan for the miles-per-gallon criteria of the year in which GSA signs the purchase contract along with the new vehicles planned for acquisition that year.

[49 FR 11945, Mar. 28, 1984; 49 FR 38950, Oct. 2, 1984]

908.7101-7 Government license tags.

(a) Government license tags shall be procured and assignments recorded by DOE offices in accordance with FPMR 41 CFR 101-38.303.

(b) The letter "E" has been designated as the prefix symbol for all DOE official license tags. Assignments of specific "blocks" of tag numbers and the maintenance of tag assignment records, is performed by the Director, Property and Equipment Management Division, Office of Policy, Procurement and Assistance Management Directorate, Headquarters. Assignments of additional "blocks" of tag numbers will be made upon receipt of written requests from field offices.

(c) Special license tags for security purposes shall be purchased in accordance with state and local laws, regulations, and procedures.

(d) In the District of Columbia, official Government tags shall be obtained from the Department of Transportation, Motor Vehicles Services Branch, District of Columbia, for all motor vehicles (except vehicles exempt for security purposes) based or housed in the District.

(e) See DOE-PMR 41 CFR 109-38.3 and 109-38.6 for additional guidance.

[49 FR 11945, Mar. 28, 1984; 49 FR 38950, Oct. 2, 1984]

908.7102 Aircraft.

Acquisition of aircraft shall be in accordance with DOE-PMR 41 CFR 109-38.5205.

908.7103 Office machines.

Acquisitions of office machines by DOE offices and its authorized contractors shall be in accordance with FPMR 41 CFR 101-25.104, 101-25.302, 101-25.302-3, 101-25.302-4, and 101-25.302-6, and 101-25.403, and DOE-PMR 41 CFR 109-25.302, 109-25.302-3, and 109-25.4.

908.7104 Office furniture and furnishings.

Acquisitions of office furniture and furnishings by DOE offices shall be in accordance with FPMR 41 CFR 101-25.104, 101-25.302, 101-25.302-1, 101-25.302-5, 101-25.302-7, and 101-25.302-8, 101-25.404 and 101-26.505, and DOE-PMR 41 CFR 109-25.302, 109-25.302-1, and 109-25.350.

908.7105 Filing cabinets.

Acquisitions of filing cabinets shall be in accordance with FPMR 41 CFR

101-26.308 and 101-25.302-2 and DOE-PMR 41 CFR 109-25.302-2.

[49 FR 11945, Mar. 28, 1984; 49 FR 38950, Oct. 2, 1984]

908.7106 Security cabinets.

(a) Acquisitions of security cabinets shall be in accordance with FPMR 41 CFR 101-26.507 and the "prerequisites to ordering" criteria contained in FPMR 41 CFR 101-25.302-2 and DOE-PMR 41 CFR 109-25.302-2.

(b) Fixed-price prime contractors and lower tier subcontractors may use GSA acquisition sources for security cabinets in accordance with FPMR 41 CFR 101-26.407 and FAR 51.

[49 FR 11945, Mar. 28, 1984; 49 FR 38950, Oct. 2, 1984]

908.7107 Alcohol.

(a) This section covers (1) Bureau of Alcohol, Tobacco and Firearms, (ATF), Treasury Department, alcohol regulations applicable to DOE, (2) delegations of authority to submit applications to purchase tax-free alcohol or specially denatured alcohol, and (3) purchases of alcohol by DOE or authorized contractors. To the fullest extent practicable, alcohol for use by DOE or its cost-type contractors shall be procured on a tax-free basis.

(b) ATF regulations relating to the acquisition and use of alcohol free of tax, by Government agencies, are set forth in 26 CFR 213.141-213.146. Copies of excerpts from these regulations may be secured from the Bureau of Alcohol, Tobacco and Firearms, Department of Treasury, Washington, D.C. 20226. These regulations shall be followed in the acquisition of alcohol.

(c) ATF Form 1444/1486, "Tax Free Spirits or Specially Denatured Spirits for Use of United States," shall be used for acquisitions of specially denatured alcohol and ethyl alcohol. Section I of the form is the application for permission to acquire and Section II is the permit. If acquisition from more than one warehouse is desirable, separate applications must be made for withdrawal from each warehouse. When permits are no longer required, they should be forwarded to the Bureau of Alcohol, Tobacco and Firearms for cancellation. Alcohol procured by use of the ATF form referred to in this subsection shall be used exclusively on DOE work.

(d) The Procurement Executive has been authorized to sign and delegate to others authority to sign applications under Bureau of Alcohol, Tobacco and Firearms regulations relating to the acquisition and use of alcohol free of tax. Specific DOE personnel have been delegated authority to execute Part I of Form 1444/1486 by letters to the Director, Bureau of Alcohol, Tobacco and Firearms without power of redelegation. Copies of such letters have been furnished to field offices. Only the individuals so authorized shall execute Section I of these forms. Requests by field offices for new authorizations or changes to existing authorizations shall be submitted by letter to the Procurement Executive.

(e) Applications on the ATF Form 1444/1486 shall be executed in duplicate by an authorized DOE official and mailed directly to the address on the application. Only one permit will be provided to each field organization. Due to the numerous locations managed by field operations offices, the exact shipping address need not be shown in block 3 of the form. Shipments, however, must be addressed to the "Department of Energy at various locations within the United States". The ATF will assign the application a permit number and return it to the requestor. Distribution of certified copies shall be controlled and each holder of a certified copy recorded.

(f) Annually, the Bureau of Alcohol, Tobacco and Firearms publishes printed lists of Distilled Spirits Plants, Bonded Warehouses and Denaturing Plants Authorized to Operate. Copies of these lists and supplies of Form 1444/1486 may be secured by written request to the Director, Bureau of Alcohol, Tobacco and Firearms, Special Operations Branch, Washington, DC 20226.

(g) A signed copy of the permit shall accompany the original purchase order issued to the plant or warehouse, where it shall be retained or returned with the shipment. Subsequent orders shall refer to the permit on file in the plant or warehouse if it was retained.

(h) When alcohol is shipped, the shipper prepares the required form as specified by Bureau of Alcohol, Tobacco and Firearms regulations and forwards them to the consignee. Upon receipt of the receiving report covering the shipment, the officer who signed the purchase order shall execute the certificate of receipt and forward it to the appropriate Regional Director, Bureau of Alcohol, Tobacco and Firearms. The carrier transporting the alcohol shall also be given a receipt as specified by Bureau of Alcohol, Tobacco and Firearms regulations.

(i) Abandoned and forfeited alcohol which has come into the custody or control of a Federal agency may be obtained by following the procedure set forth in FPMR 41 CFR 101-43.4.

908.7108 Helium.

(a) Acquisitions of helium by DOE and its authorized contractors shall be in accordance with this section.

(b) The helium act (Pub. L. 86-777, as amended (50 U.S.C. 167(d)) provides that, to the extent that supplies are readily available, whether in gaseous or liquid form, DOE shall purchase all major requirements of helium from the Secretary of Interior, Bureau of Mines, or from the Bureau of Mines distribution contractors eligible to sell Bureau of Mines helium to Federal agencies and their users in accordance with 30 CFR Part 602.

(c)(1) Purchases may be made directly from the Bureau of Mines by forwarding a purchase order in duplicate to: Bureau of Mines, Division of Helium Operations, 1100 South Fillmore Street, Amarillo, Texas 79101.

(2) Purchases may be made from those commercial firms listed in the Bureau of Mines as eligible to sell helium to Federal users.

(i) The purchase document shall contain the following statement: "Helium furnished under this contract shall be Bureau of Mines Helium."

(ii) A copy of each acquisition document shall be furnished to the address in paragraph (c)(1) of this section.

908.7109 Fuels and packaged petroleum products.

Acquisitions of fuel and packaged petroleum products by DOE offices shall be in accordance with FPMR 41 CFR 101-26.602. When contractors are authorized, consistent with 951, to acquire such products from Defense sources, they shall do so in accordance with FPMR 41 CFR 101-26.602.

908.7110 Coal.

DOE offices and authorized contractors may participate in the Defense Fuel Supply Center (DFSC) coal contracting program for carload or larger lots. If participation is desired, estimates shall be submitted to DFSC in accordance with FPMR 41 CFR 101-26.602.

908.7111 Arms and ammunition.

Pursuant to 10 U.S.C. 4655, the Secretary of the Army is authorized to furnish arms, suitable accouterments for use therewith, and ammunition for the protection of public money and property.

(a) The Department of the Army has granted clearance for Federal agencies to procure, without further reference to or clearance from that Department, all arms and ammunition of types which are not peculiar to the military services, and which are readily procurable in the civilian market.

(b) Acquisition of arms and ammunition readily procurable in the civilian market shall be made in accordance with regular acquisition procedures.

(c) Acquisition of arms and ammunition which are peculiar to the military services shall be made by submission of order form to the Commanding General, Headquarters, U.S. Army Material Development and Readiness Command, 5001 Eisenhower Avenue, Alexandria, VA 22333.

[49 FR 11945, Mar. 28, 1984, as amended at 49 FR 38950, Oct. 2, 1984]

908.7112 Materials handling equipment replacement standards.

Materials handling equipment shall be purchased for replacement purposes in accordance with the standards in FPMR 41 CFR 101-25.405 and DOE-PMR 41 CFR 109-25.4. Heads of

Contracting Activities are authorized to replace an item earlier than the date specified in such standards under unusual circumstances. A written justification shall be placed in the purchase file.

908.7113 Calibration services.

Orders for calibration services may be placed with the National Bureau of Standards, Washington, D.C. 20234, by either DOE acquisition offices or its authorized contractors. Copies of the letters authorizing contractors to order calibration services on behalf of DOE shall be sent to the Bureau of Standards, Attention: "Administrative Services Division."

908.7114 Wiretapping and eavesdropping equipment.

Acquisition by DOE offices and contractors of devices primarily designed to be used surreptitiously to overhear or record conversations is prohibited.

908.7115 Forms.

(a) DOE forms shall be obtained by DOE offices in accordance with DOE Order 1322.2A, "Forms Management." Cost-type contractors shall obtain DOE forms through the DOE contracting officer.

(b) Standard, optional, and certain other agency forms as listed in the GSA Supply Catalog will be obtained by DOE offices in accordance with FPMR 41 CFR 101-26.302.

(c) Marginally punched continuous forms shall be obtained in accordance with FPMR 41 CFR 101-26.703.

908.7116 Electronic data processing tape.

(a) Acquisitions of electronic data processing tape by DOE offices shall be in accordance with FPMR 41 CFR 101-26.508.

(b) Acquisitions of electronic data processing tape by authorized contractors shall be in accordance with FPMR 41 CFR 101-26.508-1. However, if adequate justification exists, Heads of Contracting Activities may authorize contractors to obtain their tape from other sources. When such an authorization is granted, a copy of the authorization and justification shall be retained in the contract file.

908.7117 Tabulating machine cards.

DOE offices shall acquire tabulating machine cards in accordance with FPMR 41 CFR 101-26.509.

908.7118 Rental of post office boxes.

DOE offices and authorized contractors may rent post office boxes on an annual basis, or for shorter periods by quarters, where necessary. Payments for annual rentals are to be made in advance at the beginning of the fiscal year, and for periods of less than a year, either in advance for the whole period or at the beginning of each quarter in which the box is to be used.

908.7119—908.7120 [Reserved]

908.7121 Special materials.

This section covers the purchase of materials peculiar to the DOE program. While purchases of these materials are unclassified, the specific quantities, destination or use may be classified. See appropriate sections of the Classification Guide. Contracting activities shall require authorized contractors to obtain the special materials identified in the following subsections in accordance with the procedures stated therein.

(a) *Heavy water.* The Senior Program Official or designee controls the acquisition and production of heavy water for a given program. Request for orders shall be placed directly with the cognizant Senior Program Official or designee.

(b) *Precious metals.* The Oak Ridge Operations Office is responsible for maintaining the DOE supply of precious metals. These metals are platinum, palladium, iridium, osmium, rhodium, ruthenium, gold and silver. Oak Ridge Operations Office has assigned management of these metals to Westinghouse Materials Company of Ohio (WMCO), P.O. Box 398704, Cincinnati, Ohio 45239. DOE offices and authorized contractors shall coordinate with WMCO regarding the availability of the above metals prior to the purchase of these metals on the open market.

(c) *Lithium.* Lithium is available at no cost other than normal packing, handling, and shipping charges from Oak Ridge. The excess quantities at

Oak Ridge are to be considered as the first source of supply prior to procurement of lithium compounds from any other source.

[54 FR 27646, June 30, 1989]

Subpart 908.72—Use of Acquisition and Supply Management Support Services at the Nevada Test Site

908.7200 Scope of subpart.

This subpart sets forth DOE policy for the use of the acquisition and supply management support services at the Nevada Test Site (NTS). The provisions of this subpart shall be applied to contractors carrying out authorized projects at the NTS.

908.7201 Policy.

As an integral part of its responsibility for furnishing project-related materials, equipment, and technical services, the Nevada Operations Office shall, except in special cases, provide to the fullest practicable extent, the necessary acquisition and supply management support services required to support the technical efforts of all organizations sponsoring experiments or participating in the scientific aspects of experiments conducted at the NTS. Furthermore, all organizations that are carrying out projects or performing work at the NTS will make the fullest practicable use of these facilities and services to prevent unnecessary duplication and to assure maximum efficiency and economy.

PART 909—CONTRACTOR QUALIFICATIONS

Subpart 909.1—Responsible Prospective Contractors

Sec.

909.104-1 General standards.

Subpart 909.4—Debarment, Suspension, and Ineligibility

909.402 Policy.
909.404 Consolidated lists of debarred, suspended, and ineligible contractors.
909.406 Debarment.
909.406-3 Procedures.
909.407 Suspension.
909.407-3 Procedures.

Sec.

Subpart 909.5—Organizational Conflicts of Interest

909.500 Scope of subpart.
909.570 DOE organizational conflicts of interest.
909.570-1 Scope of section.
909.570-2 Policy.
909.570-3 Definitions.
909.570-4 Criteria for recognizing organizational conflicts of interest.
909.570-5 Disclosure of organizational conflicts of interest.
909.570-6 Notices and representations: Action required of contracting officers.
909.570-7 Disclosure or representation.
909.570-8 Contract clauses.
909.570-9 Evaluation, findings, and contract award.
909.570-10 Action in lieu of termination.
909.570-11 Architect-engineering and construction contracts.
909.570-12 Subcontractors and consultants.
909.570-13 Remedies.
909.570-14 Examples.
909.570-15 Disclosure format.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 11949, Mar. 28, 1984, unless otherwise noted.

Subpart 909.1—Responsible Prospective Contractors

909.104-1 General standards.

A prospective contractor, in order to be determined as responsible, in the opinion of the contracting officer, must meet the following standards as they relate to the particular acquisition under consideration:

(b) Have an established system of accounting and financial controls which the contracting officer determines will permit the effective administration of the type of contract proposed, particularly if under its terms, the costs incurred are a factor in determining the amount payable under the contract, or if advance or progress payments are requested.

(g) If a bid or proposal for a construction contract qualifies any major equal opportunity requirement included or referenced in a solicitation, the qualification shall constitute grounds for a determination that the offeror is not eligible for award. In the case of construction acquisition actions by DOE prime contractors, this determination shall be made only with the approval of the DOE contracting officer.

Subpart 909.4—Debarment, Suspension, and Ineligibility

909.402 Policy.

DOE debarment and suspension regulations are contained in 10 CFR Part 1035. Ineligibility regulations are contained in the FAR.

909.404 Consolidated lists of debarred, suspended, and ineligible contractors.

The GSA Consolidated List of Debarred, Suspended, and Ineligible Contractors (GSA List) and the DOE Consolidated List of Debarred, Suspended, Ineligible and Voluntarily Excluded Awardees (DOE List) shall be reviewed in accordance with 10 CFR 1035.15.

909.406 Debarment.

909.406-3 Procedures.

(a) Information of possible fraud, waste, abuse, or other forms of wrongdoing which may constitute or contribute to grounds for debarment or suspension shall be reported in accordance with 10 CFR 1035.5(c).

909.407 Suspension.

909.407-3 Procedures.

(a) See 909.406-3.

Subpart 909.5—Organizational Conflicts of Interest

909.500 Scope of subpart.

DOE acquisitions will be processed in accordance with 909.570 below rather than as provided at FAR subpart 9.5 with respect to organizational conflicts of interest.

909.570 DOE organizational conflicts of interest.

909.570-1 Scope of section.

This section sets forth Department of Energy policies and procedures regarding organizational conflicts of interest (OCI) and is issued pursuant to section 644 of the Department of Energy Organization Act (Pub. L. 95-91) to implement the requirements of the Federal Nonnuclear Energy Research and Development Act of 1974 (Pub. L. 93-577), as amended, and the Federal Energy Administration Act of 1974 (Pub. L. 93-275), as amended.

909.570-2 Policy.

It is the policy of the DOE to identify and avoid or mitigate organizational conflicts of interest before entering into contracts, agreements, and other arrangements.

909.570-3 Definitions.

"Affiliates" means business concerns which are affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or when a third party controls or has the power to control both.

"Architect-engineering services" means the work or effort of a professional nature associated with the study, test, design, supervision, and construction, alteration, or repair of real property including utilities and appurtenances thereto. Such services embrace conceptual design and Title I, Title II, and Title III work, as defined in 936.605(c).

"Contract" for purposes of implementing policy on organizational conflicts of interest, means any contract, agreement or other arrangement with the Department.

"Contractor" means any person, firm, unincorporated association, joint venture, partnership, corporation or affiliates thereof, which is a party to a contract with the Department.

"Evaluation services or activities" means any work or effort, the principal purpose of which involves the independent study of technology, process, product, or policy.

"Offeror" means any person, firm, unincorporated association, joint venture, partnership, corporation or affiliates thereof, submitting a bid or proposal, solicited or unsolicited, to the Department to obtain a contract or modification thereof.

"Organizational conflicts of interest" means that a relationship or situation exists whereby an offeror or a contractor (including chief executives and directors, to the extent that they will or do become involved in the performance of the contract, and proposed consultants or subcontractors where they may be performing services similar to the services provided by the prime) has past, present, or currently planned interests that either directly or indirectly, through a client relationship relate to the work to be performed under a Department contract and which (1) may diminish its capacity to give impartial, technically sound, objective assistance and advice, or (2) may result in it being given an unfair competitive advantage. It does not include the normal flow of benefits from the performance of the contract.

"Research and development" means any work or effort, the principal purpose of which involves (1) theoretical analysis, exploration, or experimentation; or (2) extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

"Subcontractor" means any subcontractor of any tier which performs work under a contract.

"Technical consulting and management support services" means any work or effort, the principal purpose of which is to provide internal assistance to any program element or other organizational component of the Department in the formulation or administration of its programs, projects, or policies, which requires the contractor to be given access to internal or proprietary data. Such services typically include assistance in the preparation of program plans; evaluation, monitoring or review of contractors' activities or proposals submitted by prospective contractors; preparation of preliminary designs, specifications, or statements of work.

909.570-4 Criteria for recognizing organizational conflicts of interest.

(a) *General.* Two questions should generally be asked in determining whether organizational conflicts of interest exist: (1) Are there conflicting roles which might bias a contractor's judgment in relation to its work for the Department? (2) Is the contractor being given an unfair competitive advantage based on the performance of the contract? The ultimate determination as to whether organizational conflicts of interest exist should be made in the light of common sense and good business judgment based upon the relevant facts and the work to be performed. While it is difficult to identify, and to prescribe in advance, a specific method for avoiding all the various situations or relationships which might involve potential organizational conflicts of interests, Department personnel must pay particular attention to proposed contractual requirements which call for the rendering of advice, or consultation or evaluation services or similar activities that lay direct groundwork for the Department's decisions on future acquisitions, research and development programs, production and regulatory activities.

(b) *Situations or relationships involving organizational conflicts of interest.* The following general examples (which are not all-inclusive) illustrate situations or relationships where potential organizational conflicts of interest frequently arise. Specific examples are set forth at 909.570-14.

(1) Contract performance involving the preparation and furnishing of complete or essentially complete specifications which are to be used in competitive acquisition for the furnishing of products or services.

(2) Contract performance involving the preparation and furnishing of a detailed plan for specific approaches or methodologies that are to be incorporated in a competitive acquisition.

(3) Contract performance involving access to internal information not available to the public concerning Departmental plans or programs and related opinions, clarifications, interpretations, and positions.

(4) Contract performance involving access to proprietary information which cannot lawfully be used for purposes other than those authorized by the owners.

(5) Contract performance involving evaluation of the contractor's products or services, or the products or services of another party, where the contractor

is or has been substantially involved in their development or marketing.

(6) Contract performance involving the preparation and furnishing of advice to the Department in a technical area where the contractor is also providing consulting assistance in the same area to any other organization.

(7) Contract performance involving the preparation and furnishing of advice to the Department on a regulatory matter where the contractor is also providing assistance on the same or similar matter to any organization regulated by the Department.

(c) *Other considerations.* An organizational conflict of interest may exist or arise:

(1) Even though no follow-on acquisition is anticipated;

(2) Even though a hardware exclusion clause may not be appropriate; and

(3) When a contract is awarded on a noncompetitive or a sole source basis.

(d) An organizational conflict of interest is more likely to be disclosed if a contract is competitive. Accordingly, greater care shall be exercised in the absence of competition.

909.570-5 Disclosure of organizational conflicts of interest.

(a) When submitting solicitations and unsolicited proposals for (1) evaluation services or activities; (2) technical consulting and management support services and professional services; (3) research and development conducted pursuant to the authority of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), as amended; and (4) other contractual situations where special organizational conflicts of interest provisions are noted in the solicitation and included in the resulting contract, offerors shall be required to disclose relevant information bearing on the possible existence of any organizational conflicts of interest or complete the representation required by 909.570-7. This requirement shall also apply to all modifications of contracts of the types noted above except those issued under the Changes clause. Where, however, a disclosure statement of the type required by the Organizational Conflicts of Interest Disclosure or Representation provision has previously been submitted with regard to the contract being modified, only an updating of such statement shall be required. Information submitted by offerors pursuant to the disclosure requirement shall be treated by the Department, to the extent permitted by law, as confidential information to be used solely for OCI purposes.

(b) When the Government finds that an organizational conflict of interest exists or may exist with respect to an offeror or contractor, no contract or contract modification award covered by 909.570-7 shall be made until the organizational conflict of interest has been adequately avoided or mitigated, except as provided in 909.570-9.

909.570-6 Notices and representations: Action required of contracting officers.

The disclosure or representation required by 909.570-7 is designed to alert the contracting officer to situations or relationships which may constitute either present or anticipated organizational conflicts of interest with respect to a particular offeror or contractor. However, this disclosure or representation may not identify a potential organizational conflict of interest involving a successful offeror that could affect the offeror's participation in subsequent acquisitions arising out of or related to work performed under a contract that results from the solicitation currently under consideration. Accordingly, whenever such potential conflicts are foreseeable by the Government, a special notice also shall be included in the solicitation informing offerors of the fact that such a potential conflict is foreseen and that a special contract clause designed to avoid or mitigate such conflict will be included in any resultant contract as required by 909.570-7. Such notice shall specify the proposed extent and duration of restrictions to be imposed with respect to participation in subsequent acquisitions. A fixed term of reasonable duration is measured by the time required to eliminate what would otherwise constitute an unfair competitive advantage. This is a variable; and in no event shall an exclusion be stated which is not related to specific expiration date or an event certain. In the event a contractor, having performed on one contract, later seeks work that stems or may be deemed to stem directly from prior performance, such contractor shall not be precluded from proposing on follow-on work unless the prior contract contained an appropriate follow-on restriction.

909.570-7 Disclosure or representation.

The disclosure or representation provision at 952.209-70 shall be included in all solicitations, scope modifications, and unsolicited proposals for (a) evaluation services or activities; (b) technical consulting and management support services and professional services; (c) research and development conducted pursuant to the authority of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), as amended; and (d) other contractual situations where special organizational conflicts of interest provisions are noted in the solicitation and included in the resulting contract. 909.570-15 contains a suggested outline for the disclosure submission.

909.570-8 Contract clauses.

(a) *General contract clause.* Except where a special clause has been determined to be appropriate, all contracts subject to the disclosure or representation requirement of 909.570-7 shall include the clause set forth at 952.209-71.

(b) *Special contract clauses.* (1) If it is determined from the nature of the proposed contract that a potential organizational conflict of interest may exist, the Contracting Officer may determine that such conflict can be avoided through the use of an appropriate special contract clause. Examples of the types of clauses which may be employed include, but are not limited to the following:

(i) Hardware exclusion clauses which prohibit the acceptance of production contracts following a related nonproduction contract previously performed by the contractor;

(ii) Software exclusion clauses;

(iii) Clauses which require the contractor (and/or certain of its key personnel) to avoid certain organizational conflicts of interest;

(iv) Clauses which provide for the protection of the confidentiality of data and guard against its unauthorized use; and

(v) Clauses that prohibit other segments or divisions of the contractor from becoming involved in the performance of the contract work or being in a position to influence such work.

If deemed appropriate, the prospective contractor may be given the opportunity to negotiate the terms and conditions of the clause and its application including the extent and time period of any restrictions.

(2) Contracts for technical consulting and management support services, as defined in 909.570-3, are particularly susceptible to organizational conflicts of interest. Therefore, the clause set forth at 952.209-72 shall be included in all contracts for technical consulting and management support services. This clause, after any appropriate modification, may also be included in any contract for professional services and evaluation services and activities.

909.570-9 Evaluation, findings, and contract award.

(a) The contracting officer or selection official, as appropriate, shall evaluate all relevant facts submitted by an offeror pursuant to the requirements of 909.570-6 and such other relevant information as may be available concerning possible organizational conflicts of interest. After evaluation all such information in accordance with the criteria of 909.570-4 and prior to any award, a finding shall be made by the contracting officer whether possible organizational conflict of interest exist with respect to a particular offeror or whether there is little or no likelihood that such conflicts exist. When formal Source Evaluation Board procedures are applicable, the finding shall be made by the Source Selection Official. If the finding indicates that such conflicts exist, then the contracting officer shall:

(1) Disqualify the offeror from award; or

(2) Avoid such conflicts by the inclusion of appropriate conditions in the resulting contract; or

(3) If such conflicts cannot be avoided by an appropriate contract clause, and the Secretary or the Secretary's designee has nevertheless determined that award of the contract to the offeror is in the best interest of the United States, the contract may be awarded. Where such a public interest determination is made, an appropriate written finding and determination shall be published in the FEDERAL REGISTER and an appropriate clause included in the contract to mitigate the conflict, to the extent feasible, prior to any award.

(b) Examples of circumstances justifying the determination permitted by 909.570-9(a)(3) include, but are not limited to:

(1) Situations where the public exigency will not otherwise permit; and

(2) Situations where the work or services cannot otherwise be obtained.

909.570-10 Action in lieu of termination.

If, after award, a possible organizational conflict of interest is identified by the contractor or other sources and the contracting officer determines that such a conflict does in fact exist and that it would not be in the best interest of the Government to terminate the contract as provided in the clauses required by 909.570-8, the contracting officer shall take every reasonable action to avoid or mitigate the effects of the conflict.

909.570-11 Architect-engineering and construction contracts.

(a) The award of related architect-engineering services and construction contracts or subcontracts to the same contractor can result in self-inspection of construction work and permit the contractor to render biased decisions. Such contract awards shall not be permitted unless a waiver is obtained prior to award from the Department's Procurement Executive.

(b) The award of architect-engineering services contracts, the principal purpose of which is to provide evaluation services and activities or technical consulting and management support services, shall be subject to the requirements of 909.570-7 and 909.570-8(b)(2).

909.570-12 Subcontractors and consultants.

The contracting officer shall require offerors and contractors to obtain for the Department a disclosure or representation in accordance with 909.570-7 from subcontractors and consultants who may be performing services similar to the services provided by the prime, except that subcontractors shall not normally be required to submit the disclosure or representation if such subcontract is for supplies. Such disclosure or representation may be submitted by the subcontractors and consultants directly to the contracting officer and they shall be treated by the Department, to the extent permitted by law, as confidential information to be used solely for OCI purposes. The contracting officer shall assure that contract clauses in accordance with 909.570-8 are included in subcontracts or consultant agreements involving peformance of work under a prime contract covered by this subpart.

909.570-13 Remedies.

In addition to such other remedies as may be permitted by law or contract, for a breach of any of the restrictions in this subpart or for nondisclosure or misrepresentation of any relevant facts required to be disclosed by this subpart, the Department may disqualify the contractor for subsequent Department contracts. Contractors and offerors may also be subject to the criminal penalties expressed in 18 U.S.C. 1001 for such violations.

909.570-14 Examples.

(a) In development work it is normal to select firms which have done the most advanced work in the field. It is to be expected that these firms will design and develop around their own prior knowledge. Development contractors can frequently start production earlier and more knowledgeably than can firms which did not participate in the development, and this affects the time and quality of production, both of which are important to the Government. In many instances, the Government may have financed such development. Thus, the development contractor may have an unavoidable competitive advantage which is not considered unfair and no prohibition should be imposed.

(b) The following examples illustrate types of situations and relationships where organizational conflict of interest questions frequently arise, but they are not all-inclusive.

(1) Contractor A, in connection with the performance of a study contract, is given information by the Department regarding Department plans for future acquisitions. This information is not available to interested industrial firms. *Guidance.* Normally this would constitute an OCI and the contractor should not be permitted to compete with such firms for work relating to such plans.

(2) Company A, in response to a requests for proposals (RFP), proposes to undertake certain analyses of an energy savings device as called for in the RFP. The company is one of several companies considered to be technically well qualified. In response to the inquiry in the RFP, A advises that it is currently performing similar analyses for the manufacturer of the device. *Guidance.* Normally this would constitute an OCI and a contract for that particular work would not be awarded to Company A because it would be placed in a position in which its judgment could be biased in relationship to its work for the Department. Since there are other well qualified companies available, there would be no reason for granting a waiver of the policy.

(3) Accounting Firm A, in response to a requests for proposals (RFP), proposes to undertake an analysis of the profitability of one segment of the energy industry. The firm is one of several firms considered to be technically well qualified. In response to the inquiry in the RFP, A advises that it derives a substantial portion of its income from the industry to be studied. *Guidance.* Normally this would constitute an OCI and a contract would not be awarded to Firm A because it would be placed in a position in which its judgment could be biased in relationship it its work for the Department.

(4) Company A prepares updated Government specifications for a standard refrigerator to be procured competitively. *Guidance.* Normally this would constitute an OCI and Company A shall not be allowed for a reasonable period of time to compete for supply of the refrigerator.

(5) Company A designs or develops new electronics equipment and, as a result of the design or development, prepares specifications. *Guidance.* Normally this would not constitute an OCI and the company may supply the electronics equipment.

(6) A tool company and/or a machinery company representing the American Tool Institute works under the supervision and control of Government representatives to refine specifications or to clarify the requirements of a specific acquisition. *Guidance.* Normally this would constitute an OCI and these companies may supply the item.

(7) Prior to acquisition of Automatic Data Processing (ADP) Equipment, Company A is awarded a contract to develop software to automate a DOE function. Since the software can be written to favor a particular vendor's commercial ADP hardware, a potential conflict of interest exists. *Guidance.* Normally this would constitute an OCI and Company A should be barred from at least the initial follow-on ADP hardware acquisition using the software developed under its development contract.

(8) Company A receives a contract to define the detailed performance characteristics a Government agency will require for the purchase of rocket fuels. A has not developed the particular fuels. At the time the contract is awarded, it is clear to both parties that the performance characteristics arrived at will be used by the Government agency to choose competitively a contractor to develop or produce the fuels. *Guidance.* Normally this would constitute an OCI and Company A shall not be permitted to bid on this acquisition.

(9) Company A receives a contract to prepare a detailed plan for the acquisition of services aimed at the advanced scientific and engineering training of the Department's personnel. It suggests a curriculum which the agency endorses and incorporates in requests for proposals to various institutions to

establish and conduct such training. *Guidance.* Normally this would constitute an OCI and Company A shall not be permitted to bid on this acquisition.

(10) Consulting Firm A, in response to an RFP, proposes to undertake an evaluation of the environmental impacts of coal-fired powered plants as called for in the RFP. The company is one of several companies considered to be technically well qualified. In response to the inquiry in the RFP, A advices that it derives a substantial portion of its income from companies which manufacture nuclear power plants. *Guidance.* Normally this would constitute an OCI and a contract for that particular work would not be awarded to Firm A because it would be placed in a position in which its judgment could be biased in relationship to its work for the Department.

(11) Consulting Firm A derives a substantial portion of its income from Company B in connection with the study of natural gas production. Company B is also heavily involved with motor gasoline marketing. A discloses these facts in response to an RFP for a study of motor gasoline marketing. *Guidance.* Normally this would constitute an OCI and a contract for the study of motor gasoline marketing plants would not be awarded to Firm A because it would be placed in a position in which its judgment could be biased in relation to its work for the Department.

(12) Firm A, because of its unique technical expertise, has been requested to assist the Department in the evaluation of proposals which will result from a competitive solicitation. Firm A also plans to submit a proposal in response to this game solicitation. *Guidance.* Normally this would constitute a conflict and Firm A should be precluded from participating in the solicitation. In a particular case, it may be desirable (e.g., when the competitive field in narrow) to allow a separate division or affiliate of Firm A to submit a proposal; but in such a case, of course, Firm A would not itself participate in the evaluation of this proposal, which would be undertaken by DOE personnel or another firm.

909.570-15 Disclosure format.

(a) With respect to past, present, and currently planned interests (financial, contractual, organizational, or otherwise), the offeror should furnish a list of past, present, and currently planned activities (including contracts) which relate to the work to be performed under the solicitation.

(b) The list may be in columnar format showing:

(1) The company (or agency) for which the work is being, has been, or will be performed;

(2) Nature of the work (a brief description);

(3) Period of performance for the work;

(4) Dollar value of the work; and

(5) Sales and marketing activity.

(c) Similar information to (b) above should be provided by the covered subcontractors and consultants relating to the work to be performed by them under the solicitation.

PART 910—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

910.004 Selecting specifications or descriptions for use.

(f) *Specification for concrete using fly ash.* Pursuant to the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6962, the Environmental Protection Agency has promulgated rules at Part 249 of Title 40 of the Code of Federal Regulations regarding the use of certain waste byproducts as generally acceptable substitutes for energy intensive raw materials. When cement or concrete is being acquired, specifications should include provisions to allow for the use of (as an optional or alternate material) cement or concrete which contains fly ash. However, specifications should not be revised to allow the use of fly ash if it can be determined that for a particular project or application reasonable performance requirements for the cement or concrete will not be met, or that the use of fly ash would be inappropriate for technical reasons. Architect-engineer contracts should include provisions assuring that the provisions of 40 CFR Part 249 are considered in developing specifications.

(g) *Measurement principles for sources and special nuclear material transfers.*

(1) Certain principles regarding the resolution of measurement differences have been developed which should be used as guides in the preparation of contracts or other agreements by DOE in which monetary payments or credits depend on quantity and quality of source and special nuclear material. The provisions providing for the resolution of measurement differences must be such that resolution is always accomplished while at the same time minimizing any advantage one party might have over the other.

(2) Each contract, lease or agreement should contain a:

(i) Clause describing material to be transferred;

(ii) Clause specifying the method by which the quantity and quality are to be measured and reported;

(iii) Clause specifying the procedures to be used in resolving any differences arising as a result of such measurements;

(iv) Clause providing for the use of an umpire to settle unresolved differences in the analytical samples; and

(v) Clause specifying in detail which party shall bear the costs of resolving a difference and what constitutes such costs.

[49 FR 11953, Mar. 28, 1984; 49 FR 38950, Oct. 2, 1984]

PART 912—CONTRACT DELIVERY OR PERFORMANCE

Subpart 912.3—Priorities and Allocations

Sec.

912.300 Scope of subpart.
912.302 General.
912.304 Solicitation provision and contract clause.

Subpart 912.5—Suspension of Work, Stop-Work Orders, and Government Delay of Work

912.503 Stop-work orders.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

Subpart 912.3—Priorities and Allocations

SOURCE: 52 FR 38422, Oct. 16, 1987, unless otherwise noted.

912.300 Scope of subpart.

This subpart implements and supplements FAR Subpart 12.3, Priorities and Allocations, and implements the regulations and procedures of the Defense Priorities and Allocations System (DPAS) in solicitations and contracts in support of authorized national defense programs and those energy programs which maximize domestic energy supplies. (See 15 CFR Part 350.)

912.302 General.

(d) Programs which maximize domestic energy supplies are eligible for priorities and allocations support depending on an executive decision made on a case-by-case basis. Eligibility is pursuant to section 104(a) of the Energy Conservation and Policy Act, Pub. L. 94-163, which added a new section 101(c) to the Defense Production Act. Guidance is provided by 10 CFR Part 216 and Department of Energy publication DOE/MA-0192, "Priorities and Allocations Support for Energy: Keeping Energy Programs on Schedule," dated August 1985. Rated orders placed in support of authorized energy programs are equivalent to orders placed in support of authorized defense programs under the DPAS and receive the same preferential treatment throughout the industrial supply chain.

(e) Heads of Contracting Activities shall ensure that members of their staffs and contractors under their jurisdiction are advised of the provisions of the DPAS regulation and that the related procedures are followed to ensure adherence to the regulation throughout the industrial supply chain. Under DPAS, it is mandatory that the priority rating be extended through the industrial chain from supplier to supplier.

912.304 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 952.212-70, Priorities and Allocations (Atomic Energy) (June 1987), in solicitations that will result in the placement of rated orders for authorized DOE atomic energy programs.

(b) The contracting officer shall insert the clause at 952.212-71, Priorities and Allocations (Atomic Energy) (June 1987) in contracts that are placed in support of authorized DOE atomic energy programs.

(c) The use of the provisions at 952.212-70 and the clause at 952.212-71 is optional for industrial delivery orders of $1,000 or less.

(d) The contracting officer shall insert the provision at 952.212-70 (Alternate I), Priorities and Allocations (Domestic Energy Supplies) (June 1987), in solicitations that may result in the placement of rated orders for authorized energy programs.

(e) The contracting officer shall insert the clause at 952.212-71 (Alternate I), Priorities and Allocations (Domestic Energy Supplies) (June 1987), if it is believed the contract involves a program the purpose of which is to maximize domestic energy supplies.

Subpart 912.5—Suspension of Work, Stop-Work Orders, and Government Delay of Work

912.503 Stop-work orders.

(b) Approval before issuance of a stop-work order shall be obtained at one organizational level above the contracting officer or at such higher level as the Head of the Contracting Activity may require.

[49 FR 11954, Mar. 28, 1984]

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 913—SMALL PURCHASES AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 913.3—Fast Payment Procedure

Sec.
913.301 General.

Subpart 913.4—Imprest Funds

913.403 Agency responsibilities.

Subpart 913.5—Purchase Orders

913.505-1 Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule—Continuation.
913.505-3 Standard Form (SF) 44, Purchase Order Invoice-Voucher

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

Subpart 913.3—Fast Payment Procedure

913.301 General.

The fast payment procedure delineated in FAR Subpart 13.3 is not to be utilized by DOE.

[49 FR 11954, Mar. 28, 1984]

Subpart 913.4—Imprest Funds

913.403 Agency responsibilities.

(d) If imprest funds are to be used, the HCA shall issue detailed procedures for the control of such funds.

[49 FR 11954, Mar. 28, 1984]

Subpart 913.5—Purchase Orders

913.505-1 Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule—Continuation.

(a)(2) Optional Forms 347 and 348 shall be used for purchase orders using small purchase procedures. The form shall not be used as the contractor's invoice.

(b)(2) An addendum of applicable clauses, including DOE Clause Set 319 which is provided to contracting activities by the Office of Policy, Procurement and Assistant Management Directorate, shall be used with each Optional Form 347.

[52 FR 38423, Oct. 16, 1987]

913.505-3 Standard Form (SF) 44, Purchase Order Invoice-Voucher.

(b)(1) Where necessary, the HCA or designee may authorize personnel to use the SF 44 to make small purchases under $1000.

(d)(1) HCA's shall ensure that local procedures are issued which provide adequate safeguards regarding the use of this type of small purchase method, control of forms, the designation of employees authorized to use SF-44's, and accounting for purchases.

(d)(2) Employees authorized to use Standard Form (SF) 44's are responsible for books of SF 44's issued to them. They are also responsible, when purchasing an item, for assuring that funds are available for the purchase, the form is properly processed, and purchases are limited to those items not prohibited by law or regulation.

[54 FR 27646, June 30, 1989]

PART 914—SEALED BIDDING

Subpart 914.2—Solicitation of Bids

Sec.
914.201-5 Part IV Representations and instructions.
914.201-70 Preparation of invitations for bids.

Subpart 914.4—Opening of Bids and Award of Contract

914.401 Receipt and safeguarding of bids.
914.402-1 Unclassified bids.
914.404-1 Cancellation of invitations after opening.
914.406 Mistakes in bids.
914.406-3 Other mistakes disclosed before award.
914.406-4 Mistakes after award.
914.407-8 Protests against award.
914.407-70 Protest authorities.
914.408-2 Award of classified contracts.

Sec.

Subpart 914.5—Two-Step Sealed Bidding

914.502 Conditions for use.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 11954, Mar. 28, 1984, unless otherwise noted.

Subpart 914.2—Solicitation of Bids

914.201-5 Part IV—Representations and instructions.

(a) *Section K, Representations, certifications, and other statements of bidders.* (1) The further simplified representations and certifications technique discussed at 915.406-5 is not to be used in acquisitions conducted under sealed bid procedures except that a bidder who has already had its recurrent representations and certifications placed on record may be allowed to certify that they are accurate and current as part of its simplified representations and certifications. The solicitation provision at 952.215-72 shall be used in sealed bid solicitations.

(b) Include the solicitation provision at 952.215-70 if the resulting contract will contain any of the clauses referenced therein.

[49 FR 11954, Mar. 28, 1984, as amended at 50 FR 35959, Sept. 4, 1985]

914.201-70 Preparation of invitations for bids.

When an option is to be employed, the option quantity should be for an amount which bears a reasonable relationship to the initial firm quantity amount. For procedures to be used in setting the option quantity, see FAR 17.2.

Subpart 914.4—Opening of Bids and Award of Contract

914.401 Receipt and safeguarding of bids.

(c) Envelopes, or other outer covering, containing identified bids shall be time-stamped (indicating the place, date, and time of receipt) upon receipt, either in a mail room or other receiving point at the address specified in the invitation.

914.402-1 Unclassified bids.

(d) At the bid opening, the relative merits of any bid shall not be discussed by the person opening the bids or the contracting officer, with the bidders, their representatives, or with casual observers. No statements shall be issued by the bid opener or the contracting officer at a bid opening bearing on the award, the possibility of a readvertisement, mistakes in bids, etc.

914.404-1 Cancellation of invitations after opening.

(c) The Procurement Executive has been delegated authority to make the determination under FAR 14.404-1(c) and (e) and has redelegated this authority to the Heads of Contracting Activities without power of redelegation.

[50 FR 12184, Mar. 27, 1985]

914.406 Mistakes in bids.

914.406-3 Other mistakes disclosed before award.

(e) Pursuant to FAR 14.406-3(e), the Procurement Executive, has been delegated authority by the Secretary to make the determinations under FAR 14.406-3. In the case of mistakes in bids alleged after opening of bids and before award, the Procurement Executive has redelegated this authority to Heads of Contracting Activities without power of redelegation and to make administrative determinations regarding withdrawal of bids as provided for in paragraphs (a) and (c) of FAR 14.406-3, providing that each such determination shall be approved by Legal Counsel.

914.406-4 Mistakes after award.

The Procurement Executive has been delegated authority to make the determinations under FAR 14.406-4. Mistakes in bids after award, together with the data set forth in FAR 14.406-4(e), shall be submitted to the Procurement Executive for decision.

914.407-8 Protests against award.

(a) *General.* Protests must be received within ten working days after the basis for protest is known or should have been known *except that* protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals.

(b) *Protests before award.*

(3) The Head of the Contracting Activity or designee shall obtain, through the Office of Procurement Review, Headquarters, approval of the Procurement Executive to make an award where a protest has been submitted to either the DOE or to the Comptroller General.

914.407-70 Protest authorities.

(a) The Procurement Executive has the authority and responsibility for processing, reviewing, and providing to the General Accounting Office (GAO) all information relevant to a protest filed with GAO and otherwise representing DOE in all matters relating to such protests. In the case of protests filed with DOE Headquarters, the Procurement Executive shall decide such protests. The authorities and responsibilities concerning GAO protests have been delegated to the Director, Business Clearance Division, Office of Procurement Review, Headquarters.

(b) The Head of the Contracting Activity (HCA) shall decide all agency protests made to the contracting activity, with the following exceptions:

(1) The HCA is the signatory contracting officer; or

(2) Prior to making final disposition of the protest, the action is protested to GAO or DOE Headquarters; or

(3) The HCA finds that the issues raised have the potential for significant impact on DOE acquisition policy or the accomplishment of programmatic requirements.

(c) If a protest is filed with the Contracting Activity, and a decision is made by the Head of the Contracting Activity, the agency will not entertain a protest to the Procurement Executive.

[49 FR 11954, Mar. 28, 1984; 49 FR 38950, Oct. 2, 1984]

914.408-2 Award of classified contracts.

DOE regulations regarding the safeguarding of restricted data and procedures for its destruction are contained at 10 CFR Part 795.

Subpart 914.5—Two-Step Sealed Bidding

914.502 Conditions for use.

(c) Use of the two-step sealed bidding method shall be approved by the Head of the Contracting Activity. The contracting officer shall submit a written request for approval justifying its use in accordance with FAR 14.502.

[50 FR 12184, Mar. 27, 1985]

PART 915—CONTRACTING BY NEGOTIATION

Subpart 915.4—Solicitation and Receipt of Proposals and Quotations

Sec.

915.401 Applicability.
915.405-1 General.
915.406-5 Part IV Representations and instructions.
915.413 Disclosure and use of information before award.
915.413-2 Alternate II.

Subpart 915.5—Unsolicited Proposals

915.501 Definitions.
915.502 Policy.
915.503 General.
915.504 Advance guidance.
915.505 Content of unsolicited proposals.
915.506 Agency procedures.
915.506-1 Receipt and initial review.
915.506-2 Evaluation.
915.507 Contracting methods.
915.509 Limited use of data.

Subpart 915.6—Source Selection

915.610 Written or oral discussions.
915.612 Formal source selection.
915.613 Alternative source selection procedures.

Subpart 915.8—Price Negotiation

915.801 Definitions.
915.804-3 Exemptions from or waiver of submission of certified cost or pricing data.
915.804-6 Procedural requirements.
915.804-8 Contract clauses.
915.804-70 Uncertified cost or pricing data.
915.805-5 Field pricing support.
915.805-70 Audit as an aid in proposal analysis.

Sec.
915.807 Prenegotiation objectives.
915.808 Price negotiation memorandum.

Subpart 915.9—Profit

915.903 Contracting officer responsibilities.
915.905 Profit-analysis factors.
915.970 DOE structured profit and fee system.
915.970-1 General.
915.970-2 Weighted guidelines system.
915.970-3 Documentation.
915.970-4 Exceptions.
915.970-5 Special considerations—contracts with nonprofit organizations (other than educational institutions).
915.970-6 Contracts with educational institutions.
915.970-7 Alternative techniques.
915.970-8 Weighted guidelines application considerations.
915.971 Profit and fee-system for construction and construction management contracts.
915.971-1 General.
915.971-2 Limitations.
915.971-3 Factors for determining fees.
915.971-4 Considerations affecting fee amounts.
915.971-5 Fee schedules.
915.971-6 Fee base.
915.972 Special considerations for cost-plus-award-fee contracts.

Subpart 915.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

915.1003 Debriefing of unsuccessful offerors.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 11955, Mar. 28, 1984, unless otherwise noted.

Subpart 915.4—Solicitation and Receipt of Proposals and Quotations

915.401 Applicability.

In addition to the exclusions included at FAR 15.401, FAR 15.4 is not applicable to Special Research Contracts (See 917.71), Program Opportunity Notices (See 917.72), or Program Research and Development Announcements (See 917.73).

915.405-1 General.

Approval for the use of solicitation for information or planning purposes shall be obtained from the Head of the Contracting Activity.

915.406-5 Part IV Representations and instructions.

(a) Section K, Representations, certifications and other statements of offerors or quoters.

(1) Various statutes, Executive orders, and regulations require the submission of certain representations and certifications prior to the award of a Federal contract. Some of these are merely informational while others are necessary to determine eligibility for award. Some are required before the award of any contract while others are required only for special situations. Traditional practice is to require submission of these representations and certifications with every bid, proposal, or quotation. This practice creates an unnecessary paperwork burden on unsuccessful competitors since only the representations and certifications submitted by the successful competitor are routinely evaluated to assure eligibility for award. In order to lessen the administrative expense and burden associated with the repetitious submission of representations and certifications, DOE allows offerors to use a simplified three-part approach to submitting representations and certifications and requires a complete submission only by those who have been selected for award. The essential feature of this approach, which is discussed below, is that once submitted and accepted, most representations and certifications can be placed on record with the contracting activity for a period of three years and may be incorporated by reference in subsequent bids or proposals submitted to the contracting activity unless a change occurs in one or more of the representations or certifications.

(2) *Organization.* The three-part approach to submitting representations and certifications consists of the following: Part I—Simplified Representations and Certifications; Part II—Recurrent Representations and Certifications; and Part III—Additional Representations and Certifications. The purpose of these parts is discussed in the following subparagraphs and their

contents are specified in paragraph (a)(4) below.

(i) *Part I—Simplified Representations and Certifications.* When issuing negotiated competitive solicitations, DOE will request only submission of Part I—Simplified Representations and Certifications with each proposal. Part I is required as an administrative convenience for both Government and offeror personnel. It contains certain basic information which is neccessary for Government consideration prior to selection, such as who to contact for discussions and business size information which would be necessary to assure responsiveness should the solicitation be a small business set-aside. It also contains information of mutual administrative convenience such as the indication that recurrent representations and certifications have already been placed on record with the contracting office and that they remain current and correct.

(ii) *Part II—Recurrent Representations and Certifications.* Recurrent representations and certifications generally apply to all contracts which DOE awards and in the past have been submitted in a repetitious manner by all offerors. Under this approach, however, DOE will request Part II only from the source selected for award unless special circumstances pertain and approval of a different approach has been granted at a level above the contracting officer in accordance with paragraph (a)(5) below. See 914.201-5(a)(1) when sealed bids are to be solicited.

(iii) *Part III—Additional Representations and Certifications.* When required by a particular contractual situation, DOE will request only those pertinent additional representations and certifications from the source selected for award. Paragraph (a)(5) below concerning special circumstances also can be applied to those representations and certifications.

(3) *Procedures.* Each contracting office shall establish a central repository for maintenance of recurrent representations and certifications and assure that record copies are placed in the repository for reference as may be required. The recurrent representations and certifications shall be reviewed for completeness and acceptability prior to placing them on record. If acceptable, the contracting officer shall furnish a notice advising the offeror of this fact and then place the recurrent representations and certifications on record in the central repository established for that contracting activity pursuant to local procedures. A serial number and expiration date for each recurrent representations and certifications shall be included in the notice. The serial number shall consist of the two digit office identification number associated with the Procurement and Assistance Data System, the fiscal year and a sequentially assigned identification number, e.g., the first representation placed on record by the San Francisco office in FY86 would be numbered 03-86-1. The expiration date shall be the date three years after the date of an affirmative decision that the recurrent representations and certifications are acceptable. Local procedures shall identify the individual or office responsible for maintenance of the repository. When requesting recurrent representations and certifications, a solicitation document shall allow check blocks to indicate if an individual representation is not applicable to the offeror. Such procedures shall also provide guidance for contracting offices under the contracting activity's authority. Generally, each office will be expected to maintain its own repository.

(4) *Contents.* Contracting activities shall include, at Section K of the solicitation, a requirement that the Part I Simplified Representations and Certifications be submitted with each proposal and identify which, if any, of the additional representations and certifications are required and whether they must be submitted with the proposal or may be deferred until time of selection. The categories of representations and certifications consist of the following:

(i) Part I—Simplified Representations and Certifications.

(A) The offeror or bidder certifies:

(*1*) It is ( ) a Corporation, incorporated in the state of ——; ( ) an individual; ( ) a partnership; ( ) a nonprofit or educational institution; or ( ) a state or local government; and, (*2*) It is ( ), is not ( ), a small business; is ( ), is not ( ), a small and disadvantaged business; is ( ), is not ( ), a women-owned small business; and it is ( ), is not ( ) a labor surplus area concern.

(*3*) Any end product to be furnished is ( ), is not ( ) a domestic end product. See FAR 52.225-3.

(*4*) Its Data Universal Numbering System (DUNS) establishment number is: ———:

(B) The offeror certifies that the appropriate cost accounting standards coverage, if any, for any resulting contract is:

(*1*) Inapplicable.

(*2*) Full Coverage-National Defense.

(*3*) Full Coverage-Other than National Defense.

(*4*) Modified Coverage.

(C) The offeror or bidder represents that the following persons are authorized to communicate on its behalf with the Government in connection with this solicitation: list names and telephone numbers of appropriate personnel.

Name..

Phone..

(D) Recurrent Representations and Certifications. If a "Part II—Recurrent Representations and Certifications" has previously been placed on record with the contracting activity, please indicate the serial number and expiration date assigned to it:

(Number)..

(Date)..

(E) By signing below, the offeror or bidder certifies that the representations and certifications, including any recurrent representations and certifications which may have previously been placed on record, are accurate, current and complete. The offeror or bidder further certifies that it will notify the contracting activity of any changes affecting a recurrent representations and certifications package if one has been placed on record.

Solicitation Number..

Signature..

Date..

Typed Name..

Title and..

Address..

NOTE: The penalty for false statements of offers is prescribed in 18 U.S.C. 1001.

(ii) Part II—Recurrent Representations and Certifications.

(A) Certificate of Independent Price Determination FAR 52.203-2.

(B) Contingent Fee Representation and Agreement FAR 52.203-4.

(C) Parent Company and Identifying Data FAR 52.214-8.

(D) Place of Performance-Sealed Bidding FAR 52.214-14 or for negotiation, Place of Performance, FAR 52.215-20.

(E) Walsh-Healey Public Contracts Act Representation FAR 52.222-19 (need be completed only for contracts for the manufacture or furnishing of supplies to be performed in the United States and which exceed $10,000).

(F) Certification of Nonsegregated Facilities FAR 52.222-21.

(G) Previous Contracts and Compliance Reports FAR 52.222-22.

(H) Affirmative Action Compliance FAR 52.222-25 (not applicable to construction contracts).

(I) Clean Air and Water Certification FAR 52.223-1.

(iii) Part III—Additional Representations and Certifications. (Request only those applicable to a particular acquisition.)

(A) Foreign Ownership, Control, or Influence (Representation) 952.204-73.

(B) Jewel Bearings and Related Items Certificate FAR 52.208-2.

(C) Organizational Conflicts of Interest—Disclosure or Representation 952.209-70.

(D) Recovered Material Certification FAR 52.223-4.

(E) Balance of Payments Program Certificate FAR 52.225-6.

(F) Cost Accounting Standards Notices and Certification FAR 52.230-1, or FAR 52.230-2.

(G) Technical Data Certification 952.227-80.

(H) Royalty Payments Certification 952.227-81.

(5) *Special Circumstances.* Contracting personnel may, in special circumstances, depart from the procedures specified in paragraph (a)(2) of this section. For example, contracting personnel may request recurrent and/or additional representations and certifi-

cations from all sources or those selected for the competitive range in negotiated procurements. Special circumstances might include situations where discussions are not anticipated following receipt of proposals and time does not permit the delay associated with requesting representations and certifications after selection. It may also be appropriate to request full representations and certifications prior to an especially important selection which may require special consideration of such topics as conflict of interest or access to classified information prior to selection. Such a decision to depart, in special circumstances, from the procedures specified in paragraph (a)(2) of this section must be approved at a level above the contracting officer on a case-by-case basis and shall not be made on a class basis.

(b) *Section L, Instructions, conditions, and notices to offerors and quoters.* A proposal may include trade secrets and privileged or confidential commercial or financial information, which the proposer does not want disclosed to the public or used by the Government for any purposes other than proposal evaluation. Procedures for handling and protecting such data and information are discussed at 927.402-3(d)(2). Insert the solicitation provision at 952.215-71 or 952.215-72 as appropriate.

(d) *Subcontractor solicitation provisions.* Insert the notice at 952.215-70 in solicitations if the resulting contract will contain any of the clauses referenced therein.

[50 FR 35959, Sept. 4, 1985]

915.413 Disclosure and use of information before award.

915.413-2 Alternate II.

The procedures discussed at FAR 15.413-2 may be used if approved at a level above the contracting officer. See also 927.70.

Subpart 915.5—Unsolicited Proposals

915.501 Definitions.

"*Notice of program interest*" means a method by which broad general technical problem areas needing investigation are published in order to stimulate the flow of unsolicited proposals. The notice describes problems, not desired solutions.

"*Project officer*" means the individual designated by the responsible official, or designee, having responsibility for the unsolicited proposal.

"*Receiving office*" means the office designated as the central control point for the receipt, distribution, accountability, and status reporting of unsolicited proposal.

"*Responsible officicl*" means the Senior Program Official or the head of the staff office within whose area of responsibility the work contemplated by the unsolicited proposal falls.

915.502 Policy.

(a) Present and future needs demand the involvement of all resources in exploring alternative energy sources and technologies. To achieve this objective, it is DOE policy to encourage external sources of unique innovative methods, approaches, and ideas by stressing submission of unsolicited proposals for government support. In furtherance of this policy and to ensure the integrity of the acquisition process through application of reasonable controls, the DOE:

(i) Disseminates information on areas of broad technical concern whose solutions are considered relevant to the accomplishment of DOE's assigned mission areas;

(ii) Encourages potential proposers to consult with program personnel before expending resources in the development of written unsolicited proposals;

(iii) Endeavors to distribute unsolicited proposals to all interested organizations within DOE;

(iv) Processes unsolicited proposals in an expeditous manner and, where practicable, keep proposers advised as discrete decisions are made;

(v) Assures that each proposal is evaluated in a fair and objective manner; and,

(vi) Assures that each proposal will be used only for its intended purpose and the information contained therein will not be divulged without prior permission of the proposer.

(b) Extensions of contract work resulting from unsolicited proposals shall be processed in accordance with the procedures at 943.107.

915.503 General.

(c)(5) When the DOE receives a document for a commercial demonstration which might otherwise qualify as an unsolicited proposal, but its substance is generally known and may be obtained without restriction by formal competitive solicitation or program opportunity notice, or its substance closely resembles that of a pending formal competitive solicitation or program opportunity notice, the DOE's policy of obtaining competition applies.

(f) Unsolicited proposals for the performance of support services are, except as discussed in this paragraph, unacceptable as the performance of such services is unlikely to necessitate innovative or unique concepts. There may be rare instances in which an unsolicited proposal offers an innovative or unique approach to the accomplishment of a support service. If such a proposal offers a previously unknown or an alternative approach to generally recognized techniques for the accomplishment of a specific service(s) and such approach will provide significantly greater economy or enhanced quality, it may be considered for acceptance. Such acceptance shall, however, require approval of the acquisition of support services in accordance with applicable DOE Directives and be processed as a deviation to the prohibition herein in accordance with Subpart 901.4.

915.504 Advance guidance.

(b)(6) A notice of program interest can be used to provide notification of areas of DOE interest and to stimulate the flow of unsolicited proposals. Each program office should publish periodically a listing of broad, general, technical problems and areas needing investigation using the following guidelines.

(i) The notice shall be coordinated in advance with the head of the contracting office that will be expected to award any contracts which may result from the notice, so that advance preparations can be made for processing proposals in accordance 915.506 and to assure that some form of competitive solicitation, e.g. a program research and development or request for proposal, is not possible.

(ii) Concurrence shall be obtained from the appropriate procurement Advisor in the Office of Procurement Support, Headquarters when it is not possible to identify which contracting office(s) will make possible award(s).

(iii) The notice should contain, but need not be limited to, the following information:

(A) A number assigned by the program office for control and reference purposes;

(B) A brief description of the broad, general, technical program or areas needing investigation (generally 50 words or less).

(C) Restrictions, if any, as to who may submit proposals.

(D) A contact (name and telephone number) within the program office or divisions, where additional information may be obtained.

(E) An expiration date, as needed. An expiration date for a Notice of Program Interest is not to be considered a formal due date or common cut-off date for the submission or receipt of unsolicited proposals as is associated with formal solicitations. Rather the expiration date is an approximation of the time after which program interests or directions may be expected to change less the necessary administrative time that will be needed for the evaluation and possible award of contracts resulting from the notice.

(F) A statement that DOE reserves the right to support or not to support any or all proposals in whole or in part.

(G) A statement that DOE assumes no responsibility for any costs associated with specific proposal preparation.

(H) The number of proposal copies required and address of the receiving office to which proposals should be mailed.

(I) A reference that detailed information concerning contracting policy and procedures is contained in the DEAR, copies of which are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(iv) The notice content should be consolidated at the responsible office level and should be in the format that best reflects the needs of that specific office; e.g., letter, booklet, bulletin, or related documents and coordinated in advance with the Unsolicited Proposal Management Officer identified at 915.506(b).

(v) The notice should be given wide distribution including mailings to industry associations, including small business associations, schools, colleges and universities, appropriate professional and scientific journals, other DOE offices, as well as individuals and organizations that request copies on a one-time basis.

(vi) Copies of the notice shall be given to the Unsolicited Proposal Management Officer identified at 915.506(b).

[49 FR 11955, Mar. 28, 1984; 49 FR 38950, Oct. 2, 1984]

915.505 Content of unsolicited proposals.

(b)(5) Unsolicited proposals for nonnuclear energy demonstration activities not covered by existing formal competitive solicitations or program opportunity notices should contain information along the lines of the information requirements at 917.7201-5. They may include a request for federal assistance or participation, and shall be subject to the cost sharing provisions of 917.70.

915.506 Agency procedures.

(b) Unless otherwise specified in a notice of program interest, all unsolicited proposals should be submitted to the Procurement and Assistance Management Directorate, U.S. DOE, Attn: Unsolicited Proposals Management Officer, MA432, Washington, DC 20585. If the proposer has ascertained the cognizant program office through preliminary contacts with program staff, the proposal may be submitted directly to that office. In such instances, the proposer should separately send a copy of the proposal cover letter to the Unsolicited Proposal Management Officer to assure that the proposal is logged in the Department's automated tracking system for unsolicited proposals.

915.506-1 Receipt and initial review.

(b) The DOE receiving office shall acknowledge receipt of an unsolicited proposal, complete a preliminary review, and establish accountability. It will send copies of the unsolicited proposal to the responsible official(s). Each unsolicited proposal that is circulated for a comprehensive evaluation shall have an agency control number and legend attached or imprinted on it by the receiving office identifying it as an unsolicited proposal and stating that it shall be used only for purposes of evaluation.

915.506-2 Evaluation.

(a) The responsible official is responsible for assigment of a project officer and such personnel as may be necessary to evaluate the proposal fairly and objectively. In some instances the responsible official may find it advantageous to subject the proposal to external rather than internal evaluation. In such cases, the prior written permission of the proposer shall be obtained. Proposals for demonstration projects will be evaluated in accordance with the Federal support criteria set forth in 917.7201-3 and the evaluation criteria set forth in 917.70 and 917.7203(c) (1) through (8).

(1) The submission of innovative methods, approaches, or ideas is not restricted to those problems or technical areas published in a DOE notice of program interest.

(c) If, after evaluation, it is decided that a proposal will not be supported, it is the responsibility of:

(1) The project officer to prepare a written statement setting forth the basis for rejection of the unsolicited proposal, submit one copy to the responsible official and retain one copy in the permanent file.

(2) The responsible official to prepare a letter to the proposer with copies to the receiving office and the project officer.

(d) If the decision is to support a proposal, a written justification is required which shall address each of the evaluation factors contained in FAR

15.506-2. The justification shall be appended to the procurement request.

(e) Unsolicited proposal justifications shall contain a recommedation, concurrence (when needed), and approval as follows: (In the case of cost shared contracts, review levels shall be based on the sum of the contractor and Government shares.)

(1) The recommendation shall be prepared and reviewed within the initiating office at such levels as are deemed appropriate by the Senior Program Offical for acquisitions initiated by the Headquarters or by the Head of the Contracting Activity for field initiated acquisitions. In establishing levels for the review of such recommendations, the Senior Program Official or Head of the Contracting Activity shall assure that the recommendation is reviewed at a senior organizational level in order to assure that competition is sought when appropriate. See FAR 15.507 and 15.508.

(2) The more complex and costly transactions will benefit from early coordination with counsel. Justifications exceeding $1,000,000, or such lower level as counsel may determine, shall be submitted by the initiator to counsel, at the Headquarters or field location of the initiator, for concurrence prior to forwarding to the contracting officer.

(3) The justification, following review of the recommendation and concurrence of counsel (if required or considered appropriate), shall be forwarded to the cognizant contracting officer for approval. If the justification is acceptable to the cognizant contracting officer, final approval shall be sought at such level as the Head of the Contracting Activity may require. The Head of the Contracting Activity shall further assure that the official designated as the reviewing official is a contracting officer.

(f) Notwithstanding the decision to accept an unsolicited proposal, organizations and individuals are subject to the policies concerning the responsibility of prospective contractors set forth in 909.1 and FAR 9.1.

[49 FR 11955, Mar. 28, 1984; 49 FR 38950, Oct. 2, 1984, as amended at 50 FR 12184, Mar. 27, 1985]

915.507 Contracting methods.

(d) Subpart 917.70, which outlines DOE's cost participation policy, shall be followed in determining the extent to which the DOE will participate in the cost for the proposed effort.

915.509 Limited use of data.

(a) An unsolicited proposal may include technical data and other data, including trade secrets and privileged or confidential commercial or financial information, which the proposer does not want disclosed to the public or used by the Government for any purpose other than proposal evaluation. Procedures for handling and protecting such data and information are set forth at 927.402-3(d)(3).

Subpart 915.6—Source Selection

915.610 Written or oral discussions.

(c) The contracting officer shall point out to each offeror within the competitive range any ambiguities or uncertainties in its proposal. For research, development, and demonstration contracts, the discussions are intended to assist the Source Evaluation Board (SEB) in understanding fully the proposals and their strengths and weaknesses based upon the individual efforts of each proposer, in assuring that the meanings and points of emphasis of solicitation provisions have been adequately conveyed to the offerors so that all offerors are competing equally on the basis intended by the Government, and in evaluating the qualifications of the personnel proposed by each firm. Where the proposed award is not for research, development, or demonstration, (e.g., supplies and services) the contracting officer should point out instances in which aspects of a proposal contain a weakness in relation to the Government's requirements.

915.612 Formal source selection.

(a) Negotiated competitive acquisitions of less than $10 million are not subject to the SEB Handbook unless specifically required by the Procurement Executive. For acquisitions under $10 million, less formal procedures are used.

(b) The contracting officer may form teams to evaluate the technical, business and management, and cost aspects of proposals. When teams are used, each will function independently of the other and report its findings to the contracting officer. The contracting officer will discuss those findings with the teams (or representatives thereof) separately or together, as may be more helpful. The contracting officer will negotiate and execute the contractual instrument, using, in many cases, some of the same specialists who participated in earlier evaluations and discussions. Part 971 sets forth administrative requirements for the review and approval of certain contract actions.

(c) In selections other than where price is the determining factor, the evaluation procedures set forth in (c) (1), (2), and (3) below should be considered.

(1) *Technical evaluation.* Generally, the contracting officer must rely on scientific and engineering personnel for assistance in reviewing proposals from a technical point of view. It is imperative, therefore, that technical evaluations and findings be fully documented and reviewed by responsible personnel. The report shall reflect the scoring and ranking of the proposals. The report shall also include a narrative evaluation specifying the strengths and weaknesses of each proposal, and any reservations or qualifications that might bear upon the selection of sources for negotiation and award. Concrete technical reasons supporting a determination of unacceptability with regard to any proposal shall be included. After evaluation and preparation of written and signed evaluation findings by the technical evaluators, such evaluations and proposals shall be returned to the contracting officer or authorized representative, and maintained as a permanent record in the contract file.

(2) *Business and management evaluation.* Management capabilities of the offeror to perform the required work in a timely manner must be appraised. In making this appraisal, the following factors, as appropriate, and as stated in the solicitation must be considered: The company's management organization; past performance; reputation for reliability; availability of required facilities; cost controls; ability to control, maintain, and account for any property provided by the Government; the offeror's willingness to devote its resources to the proposed work with appropriate diligence; and other pertinent administrative and business information that may have been requested in the solicitation, such as certifications and representations.

(3) *Price/cost determinations.* Each proposal requires some form of price/cost analysis. The evaluation should consider items such as categories and amounts of labor, indirect costs, materials, travel, computer time, as well as information with regard to the contractor's past cost performance, including contracts or subcontracts for like services or supplies. The contracting officer must exercise judgment in determining the extent of analysis in each case and any desire to obtain assistance from personnel trained in this discipline.

(d) Personnel from the DOE, other Government agencies, consultants, and contractors including those who operate or manage Government-owned facilities may be used in the evaluation process as advisors when their services are necessary and available. When personnel outside the Government, including those of contractors who operate or manage Government-owned facilities, are used as advisors, approval and disclosure procedures as required by 927.7000 shall be followed. In all instances, such personnel will be required to comply with DOE conflict of interest regulations and nondisclosure of information requirements.

(e) The SEB procedures are intended to provide the Source Selection Official with sufficient information to select an offeror for negotiation on the basis of its proposal. However, it is within the discretion of the Source Selection Official to select multiple offerors from those within the competitive range for negotiation and to direct that discussions be reopened with those offerors and that best and final offers be obtained on the basis of fully definitized contract documents executed by the offerors. The contracting officer should seek correction of each offeror's correctable weaknesses using only technical and other information which the Government is entitled to use for this purpose. At the conclusion of discussions, a final common cut-off date which allows a reasonable opportunity for submission of best and final offers shall be established and all participants notified.

(q) Except as provided in 915.612(e), revised proposals are evaluated, selection is made, and negotiations may be conducted with the selected offeror but only to definitize a final agreement on price, terms, and conditions, etc. (No factor which could have had any effect on the selection process may be changed after the common cut-off date for discussions).

[49 FR 11955, Mar. 28, 1984; 49 FR 38950, Oct. 2, 1984, as amended at 52 FR 38423, Oct. 16, 1987]

915.613 Alternative source selection procedures.

Source Evaluation Board (SEB) procedures shall be used for all negotiated competitive prime acquisitions expected to be $10 million or more, excepting acquisitions for architect-engineer services, and acquisitions specifically waived by the Procurement Executive. Guidance regarding the designation and operation of the SEB are set forth in the SEB Handbook.

[52 FR 38423, Oct. 16, 1987]

Subpart 915.8—Price Negotiation

915.801 Definitions.

"Field Pricing Support" is synonymous with "pricing support" and within the Department of Energy means the advice provided the contracting officer by auditors, price or cost analysts, quality assurance personnel, engineers, program office personnel, small business, legal, financial or other specialists based on their review and analysis of a contractor's proposal notwithstanding their organizational location.

915.804–3 Exemptions from or waiver of submission of certified cost or pricing data.

(b)(2)(iii) Heads of Contracting Activities, for contracts estimated to be within the limits of their delegated authority, may approve the finding required by FAR 15.804-3(b)(2)(iii) that the lowest price received is unreasonable.

(c)(8) Heads of Contracting Activities, for contracts estimated to be within the limits of their delegated authority, may approve the finding required by FAR 15.804-3(c)(8) that the price is unreasonable even though it is a catalog or market price.

(g) Heads of Contracting Activities, for contracts estimated to be within the limits of their delegated authority, may, without power of redelegation, authorize individual or class exemptions for exceptional cases in accordance with FAR 15.804-3(g).

(i) Heads of Contracting Activities, for contracts estimated to be within the limits of their delegated authority, may, without power of redelegation, waive the requirements for cost or pricing data under the circumstances set forth in FAR 15.804-3(i) provided that any such waivers are promptly reported to the Procurement Executive.

915.804–6 Procedural requirements.

(e) Heads of Contracting Activities, for contracts estimated to be within the limits of their delegated authority, may, without power of redelegation, waive the requirements for cost or pricing data under the circumstances set forth in FAR 15.804-6(e) provided that any such waivers are promptly reported to the Procurement Executive.

(i) Heads of Contracting Activities, for contracts estimated to be within the limits of their delegated authority, may, without power of redelegation, waive the requirements for subcontractor cost or pricing data under the circumstances set forth in FAR 15.804-6(i), provided that any such waivers are promptly reported to the Procurement Executive.

915.804–8 Contract clauses.

(a) The clause prescribed at FAR 52.215-22, Price Reduction For Defective Cost or Pricing Data, shall only be included in negotiated contracts where a Certificate of Current Cost or Pricing Data was obtained.

(b) The contracting officer shall, insert the clause at FAR 52.215-23, Price Reduction for Defective Cost or Pricing Data—Modifications, in solicitations and contracts when the clause prescribed in paragraph (a) of this subsection has not been included.

[49 FR 11955, Mar. 28, 1984, as amended at 50 FR 12184, Mar. 27, 1985]

915.804-70 Uncertified cost or pricing data.

Anytime an offeror or contractor is not required to submit certified cost or pricing data (proposals of $100,000 or less) the contracting officer may require the offeror or contractor to submit uncertified cost or pricing data. The amount of data required to be submitted should be limited to that data necessary to allow the contracting officer to determine the reasonableness of the price.

[49 FR 11955, Mar. 28, 1984, as amended at 50 FR 12184, Mar. 27, 1985]

915.805-5 Field pricing support.

(a)(1) Field pricing reports as prescribed in FAR 15.805-5(a)(1) are not required for the negotiation of DOE contract prices or modifications thereof. The term "field pricing report" refers to the Department of Defense (DOD) system for obtaining a price and/or cost analysis report from a cognizant DOD field level contract management office wherein requests for the review of a proposal submitted by an offeror are initiated and the recommendations made by the various specialists of the management office are consolidated into a single report that is forwarded to the office making the contract award for use in conducting negotiations. In the DOE, such review activities, except for reviews performed by professional auditors, are expected to be accomplished by pricing support personnel located in DOE Contracting Activities. The DOE contracting officer shall formally request the assistance of appropriate pricing support personnel, other than auditors, for the review of any proposal that exceeds $500,000, unless the contracting officer has sufficient data to determine the reasonableness of the proposed cost or price. Such pricing support may be requested for proposals below $500,000, if considered necessary for the establishment of a reasonable pricing arrangement. Contracting officers, however, are not precluded by this section from requesting pricing assistance from a cognizant DOD contract management office, provided an appropriate cross-servicing arrangement for pricing support services exists between the DOE and the servicing agency.

(c)(1) When an audit is required pursuant to 915.805-70, "Audit as an aid in proposal analysis", the request for audit shall be sent directly to the Federal audit office assigned cognizance of the offeror or prospective contractor. A copy of each such request for audit, without enclosures, shall be forwarded to the Director, Audit Management Division, Office of Inspector General, Washington, D.C. When the cognizant agency is other than the Defense Contract Audit Agency or the Department of Health and Human Services, and an appropriate cross-servicing agreement has not been established, the need for audit assistance shall be coordinated with the Directorate of Procurement and Assistance Management, Office of Policy, Policy and Procedures Division.

(2) The request for audit shall establish the due date for receipt of the auditor's report and in so doing shall allow as much time as possible for the auditor's review.

(e)(6) Copies of technical analysis reports prepared by DOE technical or other pricing support personnel shall not normally be provided to the auditor. The contracting officer or the supporting price, cost, or financial analyst at the contracting activity shall determine the monetary impact of the technical findings.

915.805-70 Audit as an aid in proposal analysis.

(a) Auditors are professional accountants who, although organizationally independent, are the principal advisors to contracting officers on contractor accounting and cost matters.

(b) Audit as an aid in the negotiation of price or cost arrangements in DOE contract awards shall be utilized as provided by this subsection.

(c) Preaward audit services include:

(1) The submission of an auditor's report which sets forth the results of the review and analysis of cost data submitted by offerors as part of their pricing proposals, reviews of contractor's accounting systems, recorded contract costs, and financial condition or other related matters; and

(2) Personal consultation and advice regarding the use of the auditor's report in the negotiation and award of a contractual instrument.

(d) When a contract price will be based on cost or pricing data (FAR 15.804) submitted by the offerors, the DOE contracting officer or authorized representative shall request a review by the cognizant Federal audit activity prior to the negotiation of any contract or modification including modifications under advertised contracts in excess of:

(1) $500,000 for a firm fixed-price contract or a fixed-price contract with economic price adjustment provisions; or

(2) $1,000,000 for all other contract types, including initial prices, estimated costs of cost-reimbursement contracts, interim and final price redeterminations, and target and settlement of incentive contracts.

(e) The requirement for auditor reviews of proposals which exceed the thresholds specified in paragraph (d) above may be waived at a level above the contracting officer when the reasonableness of the negotiated contract price can be determined from information already available. The contract file shall be documented to reflect the reason for any such waiver, provided, however, that independent Government estimates of cost or price shall not be used as the sole justification for any such waiver.

(f) Ordinarily, preaward reviews by an auditor should not be requested for actions below the thresholds specified in paragraph (d) of this section. Before requesting such audits, the contracting officer should consider using recent audit reports, price negotiation memorandums, or other pertinent information regarding the offeror to establish the reasonableness of proposed price. However, auditor reviews should be considered for proposals below the specified thresholds when the contracting officer determines that:

(1) The available data is inadequate for determining the reasonableness of the contractor's cost proposal;

(2) The contractor's estimating, accounting, or purchasing methods are not reliable; or

(3) The best interest of the Government will be served by an audit review, after giving consideration to the cost of the audit, type of audit and value of the proposed contract amount.

[49 FR 11955, Mar. 28, 1984; 49 FR 38950, Oct. 2, 1984]

915.807 Prenegotiation objectives.

(d) The Head of the Contracting Activity shall assure that all prenegotiation objectives and proposed actions are documented in accordance with the requirements of FAR 15.807 and the following requirements of this section. The degree of documentation should be commensurate with the complexity and dollar value of the procurement. For those procurement actions of $250,000 and above the contracting officer shall prepare a written prenegotiation plan which shall include prenegotiation objectives for price and other contract requirements, as appropriate. The prenegotiation plan required by this section shall be included as section I of the price negotiation memorandum at 915.808. The prenegotiation plan should include, to the extent applicable, the information cited below.

PRENEGOTIATION PLAN

(1) *General.*

(a) Procurement request number, solicitation, and contract number.

(b) Offeror(s) involved in the negotiation. Include address and location where effort is to be performed.

(c) Brief description of the work to be performed (reference to statement of work is not sufficient).

(d) Type of solicitation (RFP, PON, PRDA, etc.) and type of contract being awarded.

(e) Period of performance/delivery schedule.

(f) Proposed funding schedule for term of contract.

(2) *Prior procurement history.*

Names of previous contractors, if previous awards made for same or similar work to be performed. Contract number(s) and performance period(s).

(3) *Solicitation data.*

(a) Summary of selection process used, including number of firms solicited, proposals received, competitive range, name of selection official if SEB was used.

(b) If noncompetitive, basis for approval and name and title of person approving the justification.

(c) Discuss what considerations were given to socio-economic requirements.

(4) *Advisory reports.*

Identify, by title and date, the advisory reports received in support of the negotiations, i.e., audit reports, technical evaluation reports, cost or price analysis reports, and any other advisory report used in preparing the prenegotiation objectives.

(5) *Pricing objectives.*

(a) A schedule showing the elements of the proposer's cost proposal, recommended adjustments (auditor, technical evaluation, etc.), and the negotiator's pricing objectives in columnar form.

(b) Discussion of how previous procurements impact the pricing objectives of the instant procurement.

(c) Appropriate comments justifying the negotiation objective for each element of cost. In discussing DOE's objectives indicate the position taken in advisory reports, if requested, and the proposed treatment of such advice/comments.

(d) The extent of subcontracting and justification for subcontract price(s) provided by the prime contractor and the justification as viewed by the DOE negotiator.

(e) Discussion of whether, and to what extent, negotiation will be based on actual costs expended.

(f) Discussion of any special pricing techniques and the rationale for their use.

(g) Discussion of how DOE's objective for fee and profit was established, including a copy of the weighted guideline analysis, if used. For construction contracts and construction management contracts, discuss how the profit or fee objective was established in accordance with the requirements of 915.971.

(h) Discussion of incentive arrangements, cost or technical, if applicable, (i.e., share ratios, ceiling price, minimum/maxium fees.)

(i) Discussion of the treatment given to facilities capital cost of money, if applicable, in establishing the fee/profit objective.

(j) A summary statement regarding the reasonableness of the total price objective and appropriate discussion of the considerations used to determine the reasonableness of price.

(6) *Other issues and factors.*

(a) Discuss any proposed special provisions.

(b) Identify any anticipated deviations to regulations and the required approvals.

(c) Identify any unusual features of the Statement of Work.

(d) If applicable, identify any solicitation provisions which have been challenged by the offeror.

(e) Indicate if the Consolidated List of Debarred, Suspended, and Ineligible Contractors has been reviewed.

(f) Discuss whether the contractor has an approved purchasing and accounting system.

(g) Discuss any unique or peculiar features of the contract; e.g., cost sharing, facility ownership, options, etc.

(h) Discuss any deviations to regulations or exceptions suggested by the offeror and discuss proposed disposition.

(i) Discuss any results of pre-award surveys of the offeror's financial, accounting and other management systems.

[52 FR 38423, Oct. 16, 1987]

915.808 Price negotiation memorandum.

(a) The Head of the Contracting Activity shall assure that all contract actions are adequately documented and shall establish internal review requirements therefor. While documentation may be simplified for lesser dollar value acquisitions, documentation of prenegotiation objectives and negotiation summaries shall be maintained in order to promote the discipline of adequate preparation for negotiations and to assist in supervisory review. For acquisitions of $250,000 and above, the price negotiation memorandum (PNM) shall be divided into two major sections: Section I, the prenegotiation plan and Section II, the post-negotiation summary. The prenegotiation plan prepared in accordance with 915.807 shall document the negotiation objectives established prior to the start of formal negotiations. The post-negotiation summary shall discuss the results of the negotiations leading to a final agreement, and, in a general sense, provide the results of the negotiation in terms of the extent to which prenegotiation objectives were met. In addition to the items listed at FAR 15.807 the following shall also be addressed in the PNM.

(11) Date and location of negotiations.

(12) Discussion of any issues raised during negotiations that were not addressed in the prenegotiation position.

(13) In the event that pricing or other contract terms cannot be justified to the satisfaction of the contracting officer but award is recommended because of compelling programmatic considerations, the PNM must fully document the efforts to obtain a more satisfactory agreement, including the extent to which the matter was escalated within DOE and the contractor's organization. The file must also show what consideration was given to alternate sources or other short or long-term alternatives (See FAR 15.803(d)).

(14) Indicate the date on which agreement was reached on the price, and the date the certificate of current cost or pricing data was signed, if applicable.

(15) Explain why the total price or estimated cost and fee are considered fair and reasonable if there was significant departure from the prenegotiation objectives.

(b) Whenever an audit review was requested and a report was obtained, the contracting officer shall inform the cognizant audit activity of the disposition of each audit finding and recommendation by either forwarding a copy of the price negotiation memorandum to the auditor; or by advising the auditor, in writing, if an award was cancelled or not made to the audited entity; whichever is applicable.

[49 FR 11955, Mar. 28, 1984, as amended at 52 FR 38423, Oct. 16, 1987]

Subpart 915.9—Profit

915.903 Contracting officer responsibilities.

(d)(1)(ii) The statutory limitations on profit and fees as set forth in FAR 15.903(d)(1) (i), (ii) and (iii) shall be followed, except as exempted for DOE architect-engineer contracts covering Atomic Energy Commission (AEC) and Bonneville Power Administration (BPA) functions. Pursuant to section 602(d) (13) and (20) of the Federal Property and Administration Services Act of 1949, as amended, those former AEC functions, as well as those of the BPA, now being performed by DOE are exempt from the 10 and 6 per centum cost and fee restrictions on contracts for architect-engineer services.

(d)(2) Waivers to apply the maximum cost-plus-award-fee percentage in 915.972(a)(3) in those situations that shall result in potential fees exceeding the limitations cited in FAR 15.903(d)(1) (i), (ii), and (iii) shall be forwarded to the Procurement Executive.

(f) In cases where a change or modification calls for substantially different work than the basic contract, the contractor's effort may be radically changed and a detailed analysis of the profit factors would be a necessity. Also, if the dollar amount of the change or contract modification is very significant in comparision to the contract dollar amount, a detailed analysis should be made.

(g) The estimated costs on which the maximum fee is computed pursuant to the statutory limitations set forth in FAR 15.903(d)(1) shall include facilities capital cost of money when this cost is included in cost estimates.

915.905 Profit-analysis factors.

A profit/fee analysis technique designed for a systematic application of the profit factors in FAR 15.905-1 provides contracting officers with an approach that will ensure consistent consideration of the relative value of the various factors in the establishment of a profit objective and the conduct of negotiations for a contract award. It also provides a basis for documentation of this objective, including an explanation of any significant departure from it in reaching a final agreement. The contracting officer's analysis of these prescribed factors is based on information available prior to negotiations. Such information is furnished in proposals, audit data, performance reports, preaward surveys and the like.

915.970 DOE structured profit and fee system.

This section implements FAR 15.902 and 15.905.

915.970-1 General.

(a) *Objective.* It is the intent of DOE to remunerate contractors for financial and other risks which they may assume, resources they use, and organization, performance and management capabilities they employ. Profit or fee shall be negotiated for this purpose; however, when profit or fee is determined as a separate element of the contract price, the aim of negotiation should be to fit it to the acquisition, giving due weight to effort, risk, facilities investment, and special factors as set forth in this subpart.

(b) *Commercial (profit) organization.* Profit or fee prenegotiation objectives for contracts with commercial (profit) organizations shall be determined as provided in this subpart.

(c) *Nonprofit organizations.* It is DOE's general policy to pay fees in contracts with nonprofit organizations other than educational institutions and governmental bodies; however, it is a matter of negotiation whether a fee will be paid in a given case. In making this decision, the DOE negotiating official should consider whether the contractor is ordinarily paid fees for the type of work involved. The profit objective should be reasonable in relation to the task to be performed and the requirements placed on the contractor.

(d) *Educational institutions.* It is DOE policy not to pay fees under contracts with educational institutions.

(e) *State, local and Indian tribal governments.* Profit or fee shall not be paid under contracts with State, local, and Indian tribal Governments.

915.970-2 Weighted guidelines system.

(a) To properly reflect differences among contracts and the circumstances relating thereto and to select an appropriate relative profit/fee in consideration of these differences and circumstances, weightings have been developed for application by the contracting officer to standard measurement bases representative of the prescribed profit factors cited in FAR 15.905 and paragraph (d) of this section. This is a structured system, referred to as weighted guidelines. Each profit factor or subfactor, or component thereof, has been assigned weights relative to their value to the contract's overall effort. The range of weights to be applied to each profit factor is also set forth in paragraph (d) of this section. Guidance on how to apply the weighted guidelines is set forth in 915.970-8.

(b) Except as set forth in 915.970-4, the weighted guidelines shall be used in establishing the profit objective for negotiation of contracts where cost analysis is performed.

(c) The negotiation process does not contemplate or require agreement on either estimated cost elements or profit elements. Accordingly, although the details of analysis and evaluation may be discussed in the fact-finding phase of the negotiation process in order to develop a mutual understanding of the logic of the respective positions, specific agreement on the exact weights of values of the individual profit factors is not required and need not be attempted.

(d) The factors set forth below are to be used in determining DOE profit objectives. The factors and weight ranges for each factor shall be used in all instances where the weighted guidelines are applied.

Profit factors	Weight ranges (percent)
I. Contractor Effort (Weights applied to cost):	
A. Material acquisitions:	
1. Purchased parts	1 to 3.
2. Subcontracted items	1 to 4.
3. Other materials	1 to 3.
B. Labor skills:	
1. Technical and managerial:	
a. Scientific	10 to 20.
b. Project management/administration	8 to 20.
c. Engineering	8 to 14.
2. Manufacturing	4 to 8.
3. Support services	4 to 14.
C. Overhead:	
1. Technical and managerial	5 to 8.
2. Manufacturing	3 to 6.
3. Support services	3 to 7.
D. Other direct costs	3 to 8.
E. G&A (General Management) expenses	5 to 7.
II. Contract Risk (type of contract—weights applied to total cost of items IA thru E).	0 to 8.
III. Capital Investment (Weights applied to the net book value of allocable facilities).	5 to 20.

Profit factors	Weight ranges (percent)
IV. Independent Research and Development:	
A. Investment in IR&D program (Weights applied to allocable IR&D costs).	5 to 7.
B. Developed items employed (Weights applied to total of profit $ for items IA thru E).	0 to 20.
V. Special Program Participation (Weights applied to total of Profit $ for items IA thru E).	−5 to +5.
VI. Other Considerations (Weights applied to total of Profits $ for items 1A thru E).	−5 to +5.
VII. Productivity/Performance (special computation).	(N/A)

915.970-3 Documentation.

Determination of the profit or fee objective, in accordance with this subpart shall be fully documented. A worksheet, DOE Form F 4220.23 has been developed to assist the contracting officer in this effort. Since the profit objective is the contracting officer's pre-negotiation evaluation of a total profit allowance for the proposed contract, the amounts developed for each category of cost will probably change in the course of negotiation. Furthermore, the negotiated amounts will probably vary from the objective and from the pre-negotiation detailed application of the weighted guidelines technique to each element of the contractor's input to total performance. Since the profit objective is viewed as a whole rather than as its component parts, insignificant variations from the pre-negotiation profit objective, as a result of changes to the contractor's input to total performance, need not be documented in detail. Conversely, significant deviations from the profit objective necessary to reach a final agreement on profit or fee shall be explained in the price negotiation memorandum prepared in accordance with FAR 15.808.

915.970-4 Exceptions.

(a) For contracts not expected to exceed $500,000, the weighted guidelines need not be used; however, the contracting officer may use the weighted guidelines for contracts below this amount if he or she elects to do so.

(b) For the following classes of contracts, the weighted guidelines shall not be used:

(1) Commercialization and demonstration type contracts;

(2) Management and operating contracts;

(3) Construction contracts;

(4) Construction management contracts;

(5) Contracts primarily requiring delivery of material supplied by subcontractors;

(6) Termination settlements; and

(7) Contracts with educational institutions.

(c) In addition to paragraphs (a) and (b) of this section, the contracting officer need not use the weighted guidelines in unusual pricing situations where the weighted guidelines method has been determined by the DOE negotiating official to be unsuitable. Such exceptions shall be justified in writing and shall be authorized by the Head of the Contracting Activity. The contract file shall include this doucmentation and any other information that may support the exception.

(d) If the contracting officer makes a written determination that the pricing situation meets any of the circumstances set forth above, other methods for establishing the profit objective may be used. For contracts other than those subject to Subpart 917.6, the selected method shall be supported in a manner similar to that used in the weighted guidelines (profit factor breakdown and documentation of profit objectives); however, investment or other factors that would not be applicable to the contract shall be excluded from the profit objective determination. It is intended that the methods will result in profit objectives for noncapital intensive contracts that are below those generally developed for capital intensive contracts.

915.970-5 Special considerations—contracts with nonprofit organizations (other than educational institutions).

(a) For purposes of identification, nonprofit organizations are defined as those business entities organized and operated exclusively for charitable, scientific, or educational purposes, of which no part of the net earnings inure to the benefit of any private shareholder or individual, of which no substantial part of the activities is attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office, and which are exempt from Federal income taxation under section 501 of the Internal Revenue Code.

(b) In computing the amount of profit or fee to be paid, the DOE negotiating official shall take into account the tax benefits received by a nonprofit organization. While it is difficult to establish the degree to which a remuneration under any given contract contributes to an organization's overall net profit, the DOE negotiating official should assume that there is an element of profit in any amount to be paid.

(c) In order to assure consideration of the tax posture of nonprofit organizations during a profit or fee negotiation, the DOE negotiating official shall calculate the fee as for a contract with a commercial concern and then reduce it at least 25 percent. However, depending on the circumstances, the contracting officer may pay profit or fees somewhere between this amount and the appropriate profit or fee as if it were a commercial concern. When this is the case, the contract file shall be documented to specifically state the reason or reasons.

(d) Where a contract with a nonprofit organization is for the operation of Government-owned facilities, the fee should be calculated using the procedures and schedules applicable to operating contracts as set forth in Part 970.

915.970-6 Contracts with educational institutions.

In certain situations the DOE may contract with a university to manage or operate Government-owned laboratories. These efforts are generally apart from, and not in conjunction with, their other activities, and the complexity and magnitude of the work are not normally found in standard university research or study contracts. Such operating contracts are subject to the applicable provisions set forth in Part 970.

915.970-7 Alternative techniques.

(a) Profit or fees to be paid on construction contracts and construction management contracts shall be determined in accordance with the applicable profit/fee technique for such contracts set forth in 915.971.

(b) Profit and fee to be paid on contracts under $500,000, not using the weighted guidelines, shall be judgmentally developed by the contracting officer by assigning individual dollar amounts to the factors appropriate to DOE profit considerations discussed in 915.970-2(d).

(c) Contracts which require only delivery or furnishing of goods or services supplied by subcontractors shall include a fee or profit which, in the best judgment of the contracting officer, is appropriate. It would be expected that there would be a declining relationship of profit/fee dollars in relation to total costs. The higher the cost of subcontracts, for example, the lower the profit/fee ratio to these costs.

(d) Profit/Fee considerations in termination settlements are often a question of equity. They are a matter of negotiation. They should not, however, exceed what would have otherwise been payable under weighted guidelines had the termination not occurred.

915.970-8 Weighted guidelines application considerations.

(a) *General.* (1) 915.970-2(d) lists those DOE factors which are given consideration for profit/fee determination in all cases in which profit is to be specifically negotiated. This section discusses these factors and provides guidance on how they should be evaluated.

(2) The profit/fee elements (factors or subfactors) relating to Contractor Effort, as shown 915.970-2(d), item I, are similar to those cost elements contained in most contract pricing proposals. Often, individual proposals will be in a different format, but, since these factors and subfactors are broad and basic, they provide sufficient guidance to evaluate all items of cost generally found in proposals.

(3) In making a judgment of the value of each factor, the contracting officer should recognize the definition, description, and purpose of the factors, together with consideration for evaluating them as set forth herein.

(4) The effect of the Facilities Capital Cost of Money cost principle (FAR 31.205-10) has been recognized in the weights assigned for arriving at profit and fee objectives; consequently, no offset is necessary or will be made to the prenegotiation profit objectives for cost of money recognized as a cost.

(b) *Contractor effort.* (1) This factor is a measure of how much the contractor is expected to contribute to the overall effort necessary to meet the contract performance requirements in an efficient manner. This factor, which is apart from the contractor's basic responsibility for contract performance, takes into account what resources are necessary, and what the contractor must do, to accomplish a in the contract. This factor recognizes that, within a given performance output or within a given sales dollar figure, necessary efforts on the part of individual contractors can vary widely in both value and quantity, and, that the profit objective should reflect the extent and nature of the contractor's contribution to total performance. The evaluation of this factor requires an analysis of the cost content of the proposed contract, as discussed in paragraphs (b) (2) through (4) of this section. *Not to be included as part of the cost base (for purposes of computing profit) is any amount calculated for the cost of money for facilities capital computed in accordance with Cost Accounting Standard 414.*

(2) The following comprise the base elements for measuring contractor effort:

(i) *Material acquisition.* Analysis of material acquisition cost items shall include an evaluation of the managerial and technical effort necessary to obtain the required purchased parts, subcontracted items or services, and other materials, including consideration of the number of orders and supplies and whether established sources are available or new sources must be developed. In reviewing this element:

(A) The contracting officer shall determine whether the contractor will obtain the material and tooling by routine orders from readily available suppliers (particularly orders of substantial value in relation to the total contract cost) or by subcontracts, and shall consider the extent to which the prime contractor will be required to develop complex specifications involving creative design or close tolerance manufacturing requirements.

(B) Consideration shall be given to the managerial and technical efforts necessary for the prime contractor to administer subcontracts and select subcontractors, including efforts to break out sole source subcontractors through the introduction of competition. These determinations and considerations shall be made for purchases of raw materials or basic commodities, purchases of processed material, including all types of components of standard or near standard characteristics, and purchases of pieces, assemblies, subassemblies, special tooling, and other products special to the end item. In the application of this criterion, it should be recognized that the contribution of the prime contractor to his purchasing program may be substantial. This may apply in the management of subcontracting programs involving many sources, new complex components and instrumentation, incomplete specifications, and close surveillance by the prime contractor's representative.

(C) Recognized costs proposed as direct material costs, or proposed as material overhead costs, such as scrap charges, shall be treated and evaluated as material costs for profit evaluation.

(D) Intracompany transfers which are accepted at price, in accordance with FAR 31.205-2(e), shall be evaluated as material. Other intracompany transfers shall be evaluated by individual components of cost, i.e., material, labor, and overhead.

(ii) *Labor (technical and managerial, manufacturing, and support services).* Analyses of the labor cost content of the contract shall include evaluation of the comparative quality and level of the talents, skills, and experience of those personnel to be employed for contract performance. In reviewing this element:

(A) Technical and managerial labor shall be evaluated, for the purpose of assigning profit dollars, by giving consideration to the amount of notable scientific, unusual or scarce engineering, and top management talent needed in contrast to journeyman engineering effort, professional staff, or closely related supporting personnel. The diversity, or lack thereof, of scientific, engineering and managerial specialties required for contract performance and the corresponding need for related supervision and coordination shall be evaluated. By way of definition, project management and administration labor falling within this category includes senior project management personnel who oversee and direct the work, and usually consist of the project managers, project engineers, and comparable management personnel who form the project management team that plans, directs, and takes responsibility for the execution of the program or project assignment. The cost element for project management and administration labor usually applies to architect-engineer (A-E) contracts. The weight assigned will take into consideration the dollar amount of the project supervised.

(B) Manufacturing labor shall be evaluated by giving consideration to the variety and range of required manufacturing labor skills (i.e., department heads, supervisors, skilled and unskilled labor) and the contractor's manpower resources for meeting these requirements.

(C) Support services labor shall be evaluated in a manner similar to the above by assigning higher weights to professional-type skills and lower weights to semi-professional or other type skills required for contract performance. Support services labor represents those classifications of direct labor whose efforts are not identifiable with the descriptions of labor in paragraph (b)(2)(ii)(A) and (b)(2)(ii)(B) of this subsection and may include labor classifications assigned exclusively for contract performance, such as on-site A-E firm employees performing project activities related to accounting, contract administration (including reporting), cost engineering, secretarial, clerical and the like. Care should be taken that direct charges of this nature are appropriately classified as direct rather than indirect, and that like activities are not allocated indirectly either to this contract or to the contractor's other work assignments. A weighting in excess of 9 percent for support service contract labor normally will be justified only when the quality, skill, and experience of the support labor warrants a weighting corresponding to category (A), above.

(iii) *General management (overhead and general and administrative (G&A) but exclusive of IR&D costs).* In reviewing this element:

(A) Analysis of overhead and G&A expenses includes evaluation of the makeup of these expenses and how much they contribute to contract performance. This analysis shall include a determination of the amount of labor within the expense pools and how this labor would be treated if it were considered as direct labor under the contract. The allocable labor elements shall be given the same profit consideration that they would receive if they were treated as direct labor. The other elements of these expense pools shall be evaluated to determine whether they are routine expenses (such as utilities, supplies, and maintenance) and hence given lesser profit consideration, or whether they contribute significantly to contract performance. Depreciation expenses on facilities capital will be excluded from consideration since the profit reward for facilities capital investment is separately weighted as discussed in 915.970-8(d). The composite of the individual determinations in relation to the elements of the expense pools will be the profit consideration given the pools as a whole. The procedure for assigning relative values to such expenses differs from the method used in assigning values for the direct labor. The upper and lower limits assignable to the direct labor are absolute. In the case of overhead expenses, individual expenses may be assigned values outside the range as long as the composite ratio is within the range.

(B) It is not necessary that the contractor's accounting system break down the overhead expenses within the classification of technical and managerial (or engineering) overhead, manufacturing overhead, and general and administrative expenses, unless dictated otherwise by Cost Accounting Standards (CAS). The contractor whose accounting system only reflects one overhead rate on all direct labor need not make changes to reflect more detail data (if CAS exempt) to correspond with the above classifications. In evaluating such a contractor's overhead rate, the negotiating official can break out the applicable sections of the composite rate which can be classified as technical, managerial, or engineering overhead, manufacturing overhead, and general and administrative expenses and follow the appropriate evaluation technique.

(C) There is a critical factor to consider in the determination of profit in this area. Management problems surface in various degrees and the management expertise exercised to solve them shall be considered as an element of profit. For example, a new program for an item that is on the cutting edge of the state of the art will cause more problems and require more managerial time and abilities of a higher order than a follow-on contract. If new contracts create more problems and require a higher profit consideration, follow-ons shall be adjusted downward as many of the problems may have been solved. In any event, an evaluation shall be made of the underlying managerial effort involved on a case-by-case basis.

(D) It may not be necessary for the negotiating official to make a separate profit evaluation of overhead expenses with each acquisition of substantially the same circumstance or service with the same contractor. Where an analysis of the profit weight to be assigned to the overhead pool has been made, the weight to be assigned may be used for future contracts with the same contractor until there is a change in the cost composition of the overhead pool or the contract circumstances, or until the factors discussed in paragraph (C) above are relevant.

(iv) *Other direct costs (exclusive of CAS 414, Facilities Capital Cost of Money).* In evaluating this element, it should be remembered:

(A) Proposals, particularly for research and development, often list as direct costs the kinds of expenses usually treated as indirect for other contracts. Examples are travel and subsistence, consultants, telephone, computer costs and reports reproduction. The accounting treatment of a cost category does not change the weight appropriate to the cost being evaluated.

(B) The weight ranges in the format cover the broad categories of direct material, labor, and G&A expenses. Although cost submissions may vary from the way shown in the format, all cost categories contained in submissions will fall under one of the broad groupings shown in the format. Because other direct costs are not direct material or direct labor, it follows that they will be considered as indirect costs for weighting purposes.

(C) *Contract risk.* (1) This factor reflects the policy of the Department of Energy that contractors bear an equitable share of cost risk, and to compensate them for the assumption of that risk. A contractor's risk associated with costs to perform under a Government contract is usually minimal under cost-reimbursement-type contracts. In developing a prenegotiation profit or fee objective, the negotiating official will need to consider the type of contract to be negotiated and the anticipated contractor cost risk. This consideration is one of the most important factors in arriving at a prenegotiation profit or fee objective.

(2) Profit/Fee allowances for contractor assumption of cost risk require a determination of the degree of cost responsibility the contractor assumes, and the reliability of the cost estimates in relation to the task assumed. This factor is specifically limited to the risk of costs of contract performance, including unallowable cost elements. Thus, such risks on the part of the contractor as reputation, losing a commercial market, losing potential profits in other fields, or any risk on the part of the contracting activity, such as the risk of not acquiring an ef-

fective product or service, are not within the scope of this factor.

(3) The first and basic determination of the degree of cost responsibility assumed by the contractor is related to the sharing of total risk of performance cost by the Government and the contractor through the selection of contract type. The extremes are a cost-plus-fixed-fee contract, requiring only that the contractor use his best efforts to perform a task, and a firm-fixed-price contract. A cost-plus-fixed-fee contract reflects a minimum assumption of cost responsibility, whereas a firm-fixed-price contract reflects a complete assumption of cost responsibility.

(4) The second determination is that of the reliability of the cost estimates. Sound price negotiation requires well-defined contract objectives and reliable cost estimates which, among other things, take the difficulty of the task into consideration. Prior production experience assists the contractor in preparing reliable cost estimates on new contracts for similar items.

(5) Contractors are likely to assume greater cost risk when confident that contracting officers analyze the risk incident to proposed contracts and show they are willing to compensate contractors for it. Generally, a cost-plus-fixed-fee contract will not justify a reward for risk in excess of 0.5 percent, nor will a firm-fixed-price contract justify a reward of less than the minimum on the following weighted guidelines. Where proper contract-type selection has been made, the reward for risk, by contract type, will usually fall into the following percentage ranges which are applied to total recognized contract costs, exclusive of facilities capital cost of money:

(i) Type of contract and percentage ranges for profit objectives developed for equipment and supply contracts:

Cost-Plus-Fixed-Fee—0 to 0.5%
Cost-Plus-Incentive-Fee:
  With Cost Incentives Only—1 to 2%
  With Multiple Incentives—1.5 to 3%
Fixed-Price-Incentive:
  With Cost Incentives Only—3 to 5%
  With Multiple Incentives—4 to 6%
Prospective-Price-Redeterminable—4 to 6%
Firm-Fixed-Price—6 to 8%

(ii) Type of contract and percentage ranges for profit objectives developed for research and development contracts:

Cost-Plus-Fixed-Fee—0 to 0.5%
Cost-Plus-Incentive-Fee:
  With Cost Incentives Only—1 to 2%
  With Multiple Incentives—1.5 to 3%
Fixed-Price-Incentive.
  With Cost Incentives Only—2 to 4%
  With Multiple Incentives—3 to 5%
Prospective-Price-Redeterminable—3 to 5%
Firm-Fixed-Price—5 to 7%

(iii) Type of contract and percentage ranges for profit objectives developed for contracts for services.

Cost-Plus-Fixed-Fee—0 to 0.5%
Cost-Plus-Incentive-Fee—1 to 2%
Fixed-Price-Incentive—2 to 3%
Firm-Fixed-Price—3 to 4%

(6) In assessing the selection and application of a weighting factor, the DOE negotiating official should remember:

(i) These ranges may not be appropriate for all acquisitions. For instance, a fixed-price-incentive contract that is closely priced with a low ceiling price and high incentive share may be tantamount to a firm fixed price contract. In this situation, the contracting officer may determine that a basis exists for high confidence in the reasonableness of the estimate and that little opportunity exists for cost reduction without extraordinary efforts. On the other hand, a contract with a high ceiling and low incentive formula can be considered to contain cost-plus-incentive-fee contract features. In this situation, the contracting officer may determine that the Government is retaining much of the contract responsibility and that the risk assumed by the contractor is minimal. Similarly, if a cost-plus-incentive-fee contract includes an unlimited downward (negative) fee adjustment on cost control, it could be comparable to a fixed-price-incentive-contract. In such a pricing environment, the negotiating official may determine that the Government has transferred a greater amount of cost responsibility to the contractor than is typical under a normal cost-plus-incentive-fee contract.

(ii) The acquisition may not obviously fit a specific category shown. For example, effort under a particular A-E contract may better fall into the category of R&D, rather than services. Judgment is required, therefore, in establishing the category and weights to be applied in each case.

(iii) The contractor's subcontracting program may have a significant impact on the contractor's acceptance of risk under a contract form. It can cause risk to increase or decrease in terms of both cost and performance. This consideration shall be a part of the contracting officer's overall evaluation in selecting a factor to apply for cost risk. It may be determined, for instance, that the prime contractor has effectively transferred real cost risk to a subcontractor and the contract cost risk evaluation, as a result, may be below the range that would otherwise apply for the contract type being proposed. This situation will be found to exist only in a few extraordinary situations under circumstances of (A) a follow-on production contract, in which a substantial portion of the total contract costs represents a single subcontract or a few subcontracts, and (B) the fullest incentive reward and penalty feature on cost performance having been passed by the prime contractor to the subcontractor. In an acquisition in which all of these circumstances are found to exist, a lower than usual profit weight may be applied to the aggregate of all recognized costs, including the subcontract portion. The contract risk evaluation should not be lowered, however, merely on the basis that a substantial portion of the contract costs represents subcontract costs (when there is no substantial transfer of the contractor's risk) since such action eventually can result in an undue or undesirable lessening of the amount of work let on subcontracts.

(iv) In making a contract cost risk evaluation in an acquisition that involves executing a definitive contract for a letter contract, unpriced change orders, and unpriced orders under basic ordering agreements, the effect on total contract cost risk as a result of having partial performance before a definitive contract is executed should be considered. Under some circumstances it may be concluded that the amount of cost risk has been effectively reduced. Under other circumstances it may be apparent that the contractor's cost risk remained substantially unchanged. To be equitable, the determination of a profit weight for application to the total of all recognized costs, both those incurred and those yet to be expended, must be made with consideration of all attendant circumstances and not be just the portion of costs incurred, or percentage of work completed, prior to the execution of a definitive contract.

(v) Time and material, labor hour, and overhaul contracts priced on a time and material basis shall be considered to be cost-plus-fixed-fee contracts for the purpose of establishing a profit weight in the evaluation of the contractor's assumption of contract cost risk.

(d) *Capital investment (facilities).* (1) This element relates to the consideration to be given in the profit objective in recognition of the investment risk associated with the facilities employed by the contractor. Measurement of the amount of facilities capital employed is discussed in 930.7001-4 and 930.7001-8. Five to twenty percent of the net book value of facilities capital allocated to the contract is the normal range of weight for this profit factor. The key factors that the negotiating official shall consider in evaluating this factor are:

(i) The overall cost effectiveness of the facilities employed;

(ii) Whether the facilities are general purpose or special purpose items;

(iii) The age of the facilities;

(iv) The relationship of the remaining writeoff life of the investment and the length of the program(s) or contract(s) on which the facilities are employed; and

(v) Special contract provisions that reduce the contractor's risk of recovery of facilities capital investment (termination-protection clauses, multiyear cancellation ceilings, etc.).

(2) To assist in evaluating new investment, the contracting officer should request the contractor to submit reasonable evidence that the new facilities are part of an approved investment plan and that achievable benefits to the Government will result

from the investment. New industrial facilities and equipment shall receive maximum weight when they—

(i) Are to be acquired by the contractor primarily for Government and energy related business and effort;

(ii) Have a long service life;

(iii) Have a limited economic life due to limited alternative uses; and

(iv) Reduce the total life cycle cost of the products produced for, or services to, the Department of Energy.

To the extent that the new investment represents routine replacement of existing assets, a lesser weight shall be assigned.

(e) *Independent research and development.* This factor rewards contractors in two ways:

(1) As a reward for the contractor's investment in a viable independent research and development program; considering, among other things, the program's quality, scope, and resources employed. The normal weight range for this factor is from 5 to 7 percent of allowable IR&D costs allocable to the prospective contract.

(2) As a reward for contractors who assume the extra risk of developing items with energy program applications on their own initiative with no direct Government assistance and little or no indirect Government assistance. Profit weights in the range of 0 to 20 percent of the basic profit dollars (total of profit dollars for items I.A. through I.E., 915.970-2(d)) are normal for this factor. The weight selection is to be based on the amount of assistance provided by the Government through independent research and/or development expense allowance under previous Government contracts and the extent the contractor already has been compensated for independent development through prior sales of the identical item to the Government.

(f) *Participation in special programs.* (1) A composite percentage weight within the range of −5 percent to +5 percent of the basic profit objective (total of profit dollars for items I.A. through I.E., 915.970-2(d)) may be assigned for this profit objective. This profit factor, which may apply to special circumstances as well as a particular acquisition, relates to rewards of outstanding achievement in contractor participation in the Government's small business, small disadvantaged business, women-owned small business concerns, labor surplus, energy conservation and other special programs. Participation that is rated as merely satisfactory shall be assigned a weight of zero, generally. Evidence of effective support may justify a plus weight and poor support a negative weight.

(2) In assessing this factor, the negotiating official shall:

(i) Give favorable consideration to the contractor's policies and procedures that effectively support Government small business and small disadvantaged business subcontracting programs. Any unusual effort that the contractor displays in subcontracting with these concerns, particularly for development-type work likely to result in later production opportunities, and the overall effectiveness of the contractor in subcontracting with, and furnishing assistance to, such concerns shall be considered. Conversely, failure or unwillingness on the part of the contractor to support these Government policies shall be viewed as evidence of poor performance for the purpose of establishing a profit objective.

(ii) Make a similar review and evaluation of the contractor's policies and procedures supporting the Government's labor surplus area program. In particular, favorable consideration shall be given to a contractor who (A) makes a significant effort to help find jobs and provide training for the hardcore unemployed, or (B) promotes maximum subcontractor utilization of certified eligible concerns.

(iii) Give favorable consideration to the contractor's initiatives and accomplishments in the conservation of energy and in carrying out any other special Government programs.

(g) *Other considerations.* (1) Particular situations may justify consideration of a profit allowance in addition to those specifically identified elsewhere in the guidelines. These situations shall be identified and the reason(s) for their use documented in the price negotiation memorandum. An assigned weight of −5 to +5 percent of the basic profit objective is the normal range for this profit factor depending on the circumstances of the particular acquisition. A zero weight designates a satisfactory or average effort.

(2) Examples of "other considerations" are described in the following subparagraphs.

(i) *Cost-control and other past accomplishments.* This factor allows additional profit opportunities to a prospective contractor that has previously demonstrated its ability to perform similar tasks effectively and economically. In addition, consideration should be given to (A) measures taken by the prospective contractor that result in productivity improvements and (B) other cost-reduction accomplishments that will benefit Government contracts. Among other things, consideration should be given to the contractor's efforts to explore additional production opportunities or to improve or develop new product, manufacturing or performance technologies to reduce production cost.

(ii) *Complexity of R&D or services assignment.* A weighting for the complexity of the R&D or services assignment will be considered when a contract, such as an A-E contract, relates to a DOE project facility. The following complexity categories are to be used for the purpose of establishing the appropriate fee weight:

(A) *Class A*—Manufacturing plants involving continuous closed processes or other complicated operations requiring a high degree of design particle accelerators; complex laboratories or industrial units especially designed for processing, testing or handling highly radioactive materials; facilities to be used for research, development, experimental or demonstration purposes which involve advance or unique design considerations that are peculiar to the purposes for which the facility is built.

(B) *Class B*—Normal manufacturing processes and assembly operations such as ore dressing, metal working plants and simple processing plants; power plants and accessory switching and transformer stations; water treatment plants; sewage disposal plants; hospitals and ordinary laboratories.

(C) *Class C*—Permanent administrative and general service buildings, permanent housing, roads, railroads, grading, sewers, storm drains and water and power distribution systems.

(D) *Class D*—Construction camps and facilities and other construction of a temporary nature.

(iii) *Operating capital.* This factor includes consideration of the level of the contractor's operating or working capital investment required for effective contract performance. This level will vary, depending on such circumstances as (A) the nature of the work and duration of the contract, (B) contract type and dollar magnitude, (C) the reimbursement or progress payment rate, (D) the contractor's financial management practices, and (E) the frequency of and time lag between billings and Government payments. Such circumstances should be taken into account in determining what profit adjustment, if any, is appropriate under this subfactor. When the contractor will invest relatively few dollars for operating capital purposes (because of cost reimbursement and progress payment rates, or when an advance payment method (such as a letter of credit) is used to finance the contractor), a negative adjustment may be appropriate.

(h) *Productivity/Performance adjustment for follow-on contracts.* (1) One of the objectives of the DOE profit policy is to reduce costs needed to achieve national energy goals by encouraging contractor investment in modern cost-reducing facilities and other improvements in efficiency and performance. To the extent that costs serve as the basis for pricing (both cost and profit), success in reducing costs can serve in turn to reduce the magnitude of prospective profit dollars on follow-on contracts. For example, a cost-plus-award-fee contract may be awarda as the first of two or more contracts required for a major energy program. The incentive to increase productivity or performance and reduce cost under the first contract works against the contractor on any follow-on contracts because the reduced level of costs becomes a part of the basis for pricing subsequent contracts. In order to mitigate the relative loss of prospective profit dollars on a follow-on contract that occurs when costs are reduced under the predecessor contract or contracts due to productivity or performance gains, a special "Productivity/Performance Reward" may be included in the prenegotiation profit objective of a pending follow-on acquisition under certain circumstances.

(2) The "Productivity/Performance Reward" may be applied when all of the following criteria are met:

(i) The pending acquisition is for a follow-on contract.

(ii) Reliable actual cost data relating to the predecessor contract or contracts is available to establish a fair and reasonable cost baseline.

(iii) Changes made in the configuration of the item being acquired or in the technical aspects of the services being performed are not likely to invalidate price comparability.

(3) The amount of productivity or performance reward for a given follow-on contract is based on the estimated cost reduction on the predecessor contract or contracts that can be attributed to productivity or performance gains. Set forth below are principles and procedures that apply to estimating cost reductions and calculating the productivity or performance reward:

(i) The contractor shall prepare and support the cost reduction estimate.

(ii) The overall contract cost decrease shall be based on estimated decreases measured at the unit cost level, or equivalent.

(iii) The lowest average unit cost or its equivalent (exclusive of profit) for a preceding performance period or production run shall serve as the unit cost baseline.

(iv) A technique shall be employed to determine that portion of the cost decrease attributable to productivity or performance gains as opposed to other factors such as the effects of quality differences between the base contract and the pending acquisition.

(v) When the parties agree that the estimated overall contract cost decrease is materially affected by price level differences between the base period and the current point in time, an economic price adjustment may be applied to the estimate.

(vi) The reward shall be calculated by multiplying the contract cost decrease due to productivity/performance gains by the base profit objective rate.

(vii) The degree of review and validation of the data supporting the reward calculation shall be commensurate with the materiality of this profit element in relation to the overall price objective.

(4) There may be several methods advanced, by both contracting officers and contractors, to quantify productivity/performance gains. Any technique may be acceptable, provided it equitably takes into account the principles and procedures listed above.

915.971 Profit and fee-system for construction and construction management contracts.

915.971–1 General.

(a) Business concerns awarded a DOE construction or construction management contract shall be paid a profit or fee if requested or solicited. The profit or fee objective for a construction or construction management contract shall be an amount appropriate for the type of effort contained therein. It is the intent of DOE to (1) reward contractors based on the complexity of work, (2) reward contractors who demonstrate and establish excellent records of performance and (3) reward contractors who contribute their own resources, including facilities and investment of capital.

(b) Standard fees or across-the-board agreements will not be used or made. Profit or fee objectives are to be determined for each contract according to the effort or task contracted for thereunder.

(c) Profit or fee payable on fixed-price and cost-reimbursable construction or construction management contracts shall be established in accordance with the appropriate procedures and schedules set forth in this subpart.

915.971–2 Limitations.

Amounts payable under construction and construction management contracts shall not exceed amounts derived from the schedules established for this purpose. Requests to pay fees in excess of these levels shall be forwarded to the Procurement Executive for review and approval.

915.971-3 Factors for determining fees.

(a) The profit policy stated in 915.971-1(a) reflects, in a broad sense, recognition that profit is compensation to contractors for the entrepreneurial function of organizing and managing resources (including capital resources), and the assumption of risk that all costs of performance (operating and capital) may not be reimbursable.

(b) The best approach calls for a structure that allows judgmental evaluation and determination of fee dollars for prescribed factors which impact the need for, and the rewards associated with, fee or profit, as follows.

(i) Management risk relating to performance, including the (A) quality and diversity of principal work tasks required to do the job, (B) labor intensity of the job, (C) special control problems, and (D) advance planning, forecasting and other such requirements;

(ii) The presence or absence of financial risk, including the type and terms of the contract;

(iii) The relative difficulty of work, including consideration of technical and administrative knowledge, skill, experience and clarity of technical specifications;

(iv) Degree and amount of contract work required to be performed by and with the contractor's own resources, including the extent to which the contractor contributes plant, equipment, computers, or working capital (labor, etc.);

(v) Duration of project;

(vi) Size of operation;

(vii) Benefits which may accrue to the contractor from gaining experience and know-how, from establishing or enhancing a reputation, or from being enabled to hold or expand a staff whose loyalties are primarily to the contractor; and

(viii) Other special considerations, including support of Government programs such as those relating to small and small disadvantaged business in subcontracting, energy conservation, etc.

(c) The total fee objective and amount for a particular negotiation is established by judgmental considerations of the above factors, assigning fee values as deemed appropriate for each factor and totaling the resulting amounts.

(d) In recognition of the complexities of this process, and to assist in promoting a reasonable degree of consistency and uniformity in its application, fee schedules have been developed which set forth maximum fee amounts that contracting activities are allowed to negotiate for a particular transaction without obtaining prior approval of the Procurement Executive. In addition, the fee negotiation objective established in accordance with 915.971-3(a), (b), and (c) shall not exceed the applicable fee schedule amounts without prior approval of the Procurement Executive. To facilitate application to a contract, the fee amounts are related to the total cost base which is defined as total operating and capital costs.

915.971-4 Considerations affecting fee amounts.

(a) In selecting final fee amounts for the various factors in 915.971-3 of this section, the DOE negotiating official will have to make several judgments as discussed in this subsection.

(b) Complexity of a construction project shall be considered by analysis of its major parts. For a project which includes items of work of different degrees of complexity, a single average classification should be considered, or the work should be divided into separate classifications. The following class identifications are appropriate for proper fee determinations.

(1) *Class A*—Manufacturing plants involving continuous closed processes or other complicated operations requiring a high degree of design layout or process control; nuclear reactors; atomic particle accelerators; complex laboratories or industrial units especially designed for handling radioactive materials.

(2) *Class B*—Normal manufacturing processes and assembly operations

such as ore dressing, metal working plant and simple processing plants; power plants and accessory switching and transformer stations; water treatment plants; sewage disposal plants; hospitals; and ordinary laboratories.

(3) *Class C*—Permanent administrative and general service buildings, permanent housing, roads, railroads, grading, sewers, storm drains, and water and power distribution systems.

(4) *Class D*—Construction camps and facilities and other construction of a temporary nature.

(c) Normal management elements of principal tasks relating to a construction contract cover several categories of tasks with differing rates of application throughout the construction period. The principal elements of management effort are outlined in this paragraph. Although each project has a total management value equal to 100% for all elements, the distribution of effort among the various elements will be different for each project due to differences in project character or size. The basic management elements and the normal range of efforts expected to apply for a normal sized project are as follows. When the normally expected effort will not be performed by a contractor, this fact should be considered in arriving at appropriate fee amounts.

Management elements	Effort range	
	Minimum	Maximum
I. *Broad project planning*.—Overall project planning and scheduling, establishment of key project organization and consultation with the A-E and DOE. Performed by highest level of contractor's officers, technical personnel and project manager	15	25
II. *Field planning*.—Mobilization and demobilization of top field organization from the contractor's existing organization and from other sources as necessary. Detailed project planning and scheduling for construction of facilities. Performed by the project manager and top field professional staff	18	28
III. *Labor supervision*.—Direct supervision of manual employees. Performed by contractor's subprofessional staff, such as superintendents and foremen (some salaried and some hourly rate). This includes the contractor's personnel to coordinate and expedite the work of subcontractors	12	16
IV. *Acquisition and subcontracting*.—Acquisition of other than special equipment. Selection of subcontractors and execution and administration of subcontracts. Performed by contractor's staff under supervision and direction of elements I and II	12	16
V. *Labor relations and recruitment (manual)*.—Performed by the contractor's staff under supervision and direction of elements I, II and III. This includes demobilization of work forces	7	11
VI. *Recruitment of supervisory staff*.—Staffing required to supplement the organization under elements I and II, and demobilization during completion of the project. Performed by contractor's permanent staff and recruitment personnel under supervision and direction of management elements I and II	4	6
VII. *Expediting*.—Expediting contracting performed by contractor's staff and by subcontractors. Performed by contractor's staff under supervision and direction of elements I and II	4	6
VIII. *Construction equipment operations*.—This includes mobilization and demobilization. Performed by contractor's staff under supervision, direction and coordination of elements I, II, and IV	4	6
IX. *Other services*.—Timekeeping, cost accounting, estimating, reporting, security, etc., by the contractor's staff under supervision and direction of elements I and II	4	6

(d) Fee considerations dealing with the duration of a project are usually provided by the consideration given to the degree of complexity and magnitude of the work. In only very unusual circumstances should it be necessary to separately weight, positively or negatively, for the period of services or length of time involved in the project when determining fee levels.

(e) The size of the operation is to a considerable degree a continuation of the complexity factor, and the degree and amount of work required to be performed by and with the contractor's own resources. Generally, no separate weighting, positively or negatively, is required for consideration of those factors.

(f) The degree and amount of work required to be performed by and with the contractor's own resources affect the level of fees. Reasonable fees should be based on expectations of complete construction services normally associated with a construction or construction management contract. In the case of a construction contract, reduced services can be in the form of excessive subcontracting or supporting acquisition actions and labor relation interfaces being made by the government. If an unusual amount of such work is performed by other than the contractor, it will be necessary to make downward adjustments in the fee levels to provide for the reduction in services required.

(g) The type of contract to be negotiated and the anticipated contractor cost risk shall be considered in establishing the appropriate fee objective for the contract.

(h) When a contract calls for the contractor to use its own resources, including facilities and equipment, and to make its own cost investment (i.e., when there is no letter-of-credit financing), a postive impact on the fee amount shall be reflected.

915.971-5 Fee schedules.

(a) The schedules included in this paragraph, adjusted in accordance with provisions stated herein and 915.971-6, provide maximum fee levels for construction and construction management contracts. The fees are related to the estimated cost (fee base) for the construction work and services to be performed. The schedule in paragraph (d) sets forth the basic fee schedule for construction contracts. The schedule in paragraph (f) sets forth the basic fee schedule for construction management contracts. A separate schedule in paragraph (h) has been developed (i) for determining the fee applicable to special equipment purchases and (ii) to reflect a differing level of fee consideration associated with the subcontractor effort under construction management contracts. (See 915.971-6(c) and 915.971-6(d)).

(b) The schedules cited in paragraph (a) above provides the maximum fee amount for a CPFF contract arrangement. If a fixed-price type contract is to be awarded, the fee amount set forth in the fee schedules shall be increased by an amount not to exceed 4 percent of the fee base.

(c) The fee schedule shown in paragraphs (d) and (f) assumes a letter of credit financing arrangement. If a contract provides for or requires the contractor to make their own cost investment for contract performance (i.e., when there is no letter-of-credit financing), the fee amounts set forth in the fee schedules shall be increased by an amount equal to 5 percent of the fee amount as determined from the schedules.

(d) The following schedules sets forth the base for construction contracts.

CONSTRUCTION CONTRACTS SCHEDULE

Fee base	Fee	Fee percent	Increment percent
$100,000	$5,400	5.40	5.25
$300,000	15,900	5.30	5.00
$500,000	25,900	5.18	4.72
$1,000,000	49,500	4.95	3.33
$3,000,000	116,100	3.87	2.82
$5,000,000	172,500	3.45	2.53
$10,000,000	299,000	2.99	2.18
$15,000,000	408,000	2.72	1.90
$25,000,000	598,000	2.39	1.68
$40,000,000	850,000	2.13	1.46
$60,000,000	1,142,000	1.90	1.26
$80,000,000	1,398,000	1.75	1.24
$100,000,000	1,646,000	1.65	1.03
$150,000,000	2,161,000	1.44	.80
$200,000,000	2,561,000	1.28	.65
$300,000,000	3,211,000	1.07	.50
$400,000,000	3,711,000	.93	.35
$500,000,000	4,061,000	.81	
Over $500 million	4,061,000		[1] .35

[1] 0.35 percent excess over $500 million.

(e) When using the Construction Contracts Schedule for establishing maximum payable basic fees, the following adjustments shall be made to the Schedule fee amounts for (1) complexity levels, (2) excessive subcontracting, (3) normal contractor services performed by the government or another contractor:

(i) The target fee amounts, set forth in the fee schedule, shall not be adjusted for a Class A project, which is maximum complexity. A Class B project requires a 10 percent reduction in amounts. Class C and D projects require a 20 percent and 30 percent reduction, respectively. The various classes are defined in 915.971-4(b).

(ii) The target fee schedule provides for 45 percent of the contract work to be subcontracted for such things as electrical and other specialties. Excessive subcontracting results when such efforts exceed 45 percent of the total contract work. To establish appropriate fee reductions for excessive subcontracting, the negotiating official should first determine the amount of subcontracting as a percentage of the total contract work. Next, the negotiating official should determine a percentage by which the prime contractor's normal requirement (based on a requirement for doing work with its own forces) is reduced due to the excessive subcontracting and, finally, multiply the two percentages to determine a fee reduction factor.

(iii) If acquisition or other services normally expected of the contractor (see 915.971-4(c)) are performed by the government, or another DOE prime or operating contractor, a fee reduction may also be required. The negotiating official should first determine what percentage of the total procurement or other required services is performed by others. Then the negotiating official should apply this percentage reduction to the normally assigned weightings for the management services or effort as discussed in 915.971-4(c) to arrive at the appropriate reduction factor.

(f) The following schedule sets forth the base fee for construction management contracts:

CONSTRUCTION MANAGEMENT CONTRACTS SCHEDULE

Fee base	Fee	Fee, percent	Increment, percent
$100,000	$5,400	5.40	5.25
$300,000	15,900	5.30	5.00
$500,000	25,900	5.18	4.72
$1,000,000	49,500	4.95	3.33
$3,000,000	116,100	3.87	2.82
$5,000,000	172,500	3.45	2.53
$10,000,000	299,000	2.99	2.18
$15,000,000	408,000	2.72	1.90
$25,000,000	598,000	2.39	1.68
$40,000,000	850,000	2.13	1.46
$60,000,000	1,142,000	1.90	1.28
$80,000,000	1,398,000	1.75	1.24
$100,000,000	1,646,000	1.65	1.03
Over $100 million	1,646,000		[1] 1.03

[1] 1.03 percent over $100 million.

(g) When applying the basic Construction Management Contracts Schedule for determining maximum payable fees, no adjustments are necessary to such payable fees for contractor Force account labor used for work which should otherwise be subcontracted until such Force account work exceeds, in the aggregate, 20 percent of the base. Excessive use of Force account work results when such effort exceeds 20 percent of the fee base; and, when this occurs, appropriate fee reductions for such excessive Force account labor shall be computed as follows:

(1) Determine the percentage amount of Force account work to total contractor effort.

(2) Determine the percentage amount of subcontract work reduced due to the use of Force account work.

(3) Multiply the two percentages to determine the fee reduction factor. It is not expected that reductions in the Construction Management Contracts Schedule fee amounts will be made for complexity, reduced requirements and similar adjustments as made for construction contracts.

(h) The schedule of fees for consideration of special equipment purchases and for considerations of the subcontract program under a construction management contract is as follows:

SPECIAL EQUIPMENT PURCHASES/ SUBCONTRACT WORK SCHEDULE

Fee base	Fee	Fee, percent	Increment, percent
$100,000	$1,500	1.50	[illegible]
$200,000	3,000	1.50	[illegible]
$400,000	5,940	1.48	[illegible]
$600,000	8,720	1.45	[illegible]
$800,000	11,300	1.41	[illegible]
$1,000,000	13,600	1.36	[illegible]
$2,000,000	23,600	1.18	[illegible]
$4,000,000	39,600	.99	[illegible]
$6,000,000	52,000	.87	[illegible]
$8,000,000	64,400	.81	[illegible]
$10,000,000	75,800	.76	[illegible]
$15,000,000	102,300	.68	[illegible]
$25,000,000	147,300	.59	[illegible]
$40,000,000	210,300	.53	[illegible]
$60,000,000	282,300	.47	[illegible]
$80,000,000	348,300	.44	[illegible]
$100,000,000	404,800	.41	[illegible]
$150,000,000	514,300	.34	[illegible]
$200,000,000	589,300	.29	[illegible]
$300,000,000	679,300	.23	
Over $300 million	679,300		[1] [illegible]

[1] 0.09 percent excess over $300 million.

915.971-6 Fee base.

(a) The fee base shown in the Construction Contracts Schedule and Construction Management Contracts Schedule represents that estimate of cost to which a percentage factor is applied to determine maximum fee allowances. The fee base is the estimated necessary allowable cost of the construction work or other services which are to be performed. It shall include the estimated cost for, but is not limited to, the following as they may apply in the case of a construction or construction management contract:

(1) Site preparation and utilities.

(2) Construction (labor-materials-supplies) of buildings and auxiliary facilities.

(3) Construction (labor-materials-supplies) to complete/construct temporary buildings.

(4) Design services to support the foregoing.

(5) General management and job planning cost.

(6) Labor supervision.

(7) Procurement and acquisition administration.

(8) Construction performed by subcontractors.

(9) Installation of government furnished or contractor acquired special equipment and other equipment.

(10) Equipment (other than special equipment) which is to become Government property (including a component of Government property).

(b) The fee base for the basic fee determination for a construction contract and construction management contract shall include all necessary and allowable costs cited in paragraph (f)(2) as appropriate to the type of contract; except, any home office G&A expense paid as a contract cost per cost principle guidance and procedures shall be excluded from the fee base. The fee base shall exclude:

(1) Cost of land.

(2) Cost of engineering (A&E work).

(3) Contingency estimate.

(4) Equipment rentals or use charges. (See 936.70.)

(5) Cost of government furnished equipment or materials.

(6) Special equipment as defined in 936.7201.

(c) A separate fee base shall be established for special equipment for use in applying the Special Equipment Purchases or Subcontract Work Schedule (see 915.971-5(h)). The fee base for determination of applicable fees on special equipment shall be based on the estimated purchase price of the equipment.

(d) The fee base under the Construction Management Contracts Schedule for a maximum basic fee determination for a construction management contract shall be comprised of only the costs of the construction manager's own efforts. However, it is recognized that in the case of construction management contracts, the actual construction work will be performed by subcontractors. In most cases the subcontract awards for the construction work will be made by the construction management contractor. Occasionally the contract may involve management of construction performed under a contract awarded by the Department or by one of the Department's operating contractors. In these cases, the actual cost of the subcontracted construction work shall be excluded from the fee base used to determine the maximum basic fee (under the Construction Management Contracts Schedule) applicable to a construction management contract. A separate fee base for additional allowances (using the Special Equipment Purchases or Subcontract Work Schedule) shall be established, which shall be comprised of those subcontract construction costs, special equipment purchases, and other items' costs that are contracted for or purchased by the construction manager.

[49 FR 11955, Mar. 28, 1984; 49 FR 38950, Oct. 2, 1984]

915.972 Special considerations for cost-plus-award-fee contracts.

(a) When a contract is to be awarded on cost-plus-award-fee basis in accordance with 916.404-2, several special considerations are appropriate.

(1) The base fee portion of the fee objective of an award fee contract may range from 0% up to the 50% level of the fee amount for a Cost-Plus-Fixed-Fee (CPFF) contract, arrived at by

using the weighted guidelines or other techniques (such as those provided in 915.971 for construction and construction management contracts). However, the base amount should not normally exceed 50% of the otherwise applicable fixed fee. In the event this 50% limit is exceeded, appropriate documentation shall be entered into the contract file. In no event shall the base fee exceed 60% of the fixed fee amount.

(2) The base fee plus the amount included in the award fee pool should normally not exceed the fixed fee (as subjectively determined or as developed from the fee schedule) by more than 50%. However, in the event the base fee is to be less than 50% of the fixed fee, the maximum potential award fee may be increased proportionately with the decreases in base fee amounts.

(3) The following maximum potential award fees shall apply in award fee contracts: (percent is stated as percent of fee schedule amounts).

Base fee percent	Award fee percent	Maximum total percentage
50	100	150
40	120	160
30	140	170
20	160	180
10	180	190
0	200	200

(b) Prior approval of the Procurement Executive, is required for total fee (base plus award fee pool) exceeding the guidelines in 915.972(a)(3). Additionally, in the event use of the award fee guidelines exceeds the statutory limitations discussed in FAR 15.903(d)(1) (i), (ii) and (iii), prior approval of the Procurement Executive shall also be required.

Subpart 915.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

915.1003 Debriefings of unsuccessful offerors.

(a) Debriefings must be requested within 10 working days of receipt of notification of elimination from consideration or announcement of selection. Contracting officers shall advise unsuccessful offerors of this limitation in such notification letter(s). Debriefings will be provided at the earliest feasible time, which normally shall be after announcement of the selection decision and prior to award of the contract. However, when the exigency of the situation will not permit delaying the award in order to debrief unsuccessful offerors, such debriefing may be conducted after award of the contract. The contracting officer, may if it is decided the facts justify such action, receive and act upon a request received at a later date. Also see 924.202(b).

[49 FR 11955, Mar. 28, 1984; 49 FR 38960, Oct. 2, 1984. Redesignated at 50 FR 12185, Mar. 27, 1985]

PART 916—TYPES OF CONTRACTS

Subpart 916.2—Fixed-Price Contracts

Sec.

916.203 Fixed-price contracts with economic price adjustments.
916.203-4 Contract clauses.
916.206 Fixed-ceiling-price contracts with retroactive price redetermination.
916.206-3 Limitations.
916.207 Firm-fixed-price, level-of-effort term contracts.
916.207-3 Limitations.

Subpart 916.3—Cost-Reimbursement Contracts

916.301-3 Limitations.
916.303 Cost-sharing contracts.
916.306 Cost-plus-fixed-fee contracts.
916.307 Contract clauses.

Subpart 916.4—Incentive Contracts

916.404-2 Cost-plus-award-fee contracts.
916.405 Contract clauses.

Subpart 916.6—Time-And-Materials, Labor-Hour, and Letter Contracts

916.603 Letter contracts.
916.603-2 Application.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 11972, Mar. 28, 1984, unless otherwise noted.

Subpart 916.2—Fixed-Price Contracts

916.203 Fixed-price contracts with economic price adjustments.

916.203-4 Contract clauses.

(d)(2) The Head of the Contracting Activity, or designee, for contracts estimated to be within the limits of their delegated authority, may approve the use of an economic price adjustment clause when appropriate in accordance with FAR 16.203-4(d)(1).

916.206 Fixed-ceiling-price contracts with retroactive price redetermination.

916.206-3 Limitations.

(d) The Head of the Contracting Activity, or designee, for contracts estimated to be within the limits of delegated authority, may approve the use of a fixed-ceiling-price contract with retroactive price redetermination.

916.207 Firm-fixed-price, level-of-effort term contracts.

916.207-3 Limitations.

(d) The Head of the Contracting Activity, or designee, for contracts estimated to be within the limits of their delegated authority, may approve the use of a firm-fixed-price, level-of-effort term contract in excess of $100,000.

Subpart 916.3—Cost-Reimbursement Contracts

916.301-3 Limitations.

(c) The contracting officer shall execute the determination and findings required by FAR 16.301-3(c). Local procedures may require approval of the determination and findings at a level above the contracting officer, but such approval is not a requirement of this section. Such determination and findings shall be prepared using the following format:

DEPARTMENT OF ENERGY

Determination and Findings

Authority To Use Cost-Reimbursement Type Contract

I hereby find that:

(1) The Department of Energy proposes to contract with (name of proposed contractor) for (describe work, service, or product) (identify program or project). The estimated cost is ($——) (if contract is CPFF type, insert, "plus a fixed fee of ($——) which is —— percent of the estimated cost exclusive of fee").

(2) (Set forth facts and circumstances that show why it is impracticable to secure property or services of the kind or quantity required without the use of the proposed type of contract or why the proposed method of contracting is likely to be less costly than other methods.)

I hereby determine that:

On the basis of the above findings it is impracticable to secure the property or services of the kind or quality required without the use of a (insert contract type———) type of contract, or the (insert contract type ———) method of contracting is likely to be less costly than any other method.

Date ————————————————

(Signature) ————————————

[49 FR 11972, Mar. 28, 1984, as amended at 54 FR 27647, June 30, 1989]

916.303 Cost-sharing contracts.

(b) DOE cost participation policies and application are at Subpart 917.70, Cost Participation.

916.306 Cost-plus-fixed-fee contracts.

(c)(2) The head of the Contracting Activity, or designee, for contracts estimated to be within their delegated authority, may approve (sign) the determination and findings establishing the basis for application of the statutory price or fee limitations.

916.307 Contract clauses.

(j) The contracting officer shall insert the clause at FAR 52.216-15, Predetermined Indirect Cost Rates, modified as specified in 952.216-15 in solicitations and contracts when a cost-reimbursement research and development contract with a State or local government is contemplated and predetermined indirect cost rates are to be used.

Subpart 915.4—Incentive Contracts

916.404-2 Cost-plus-award-fee contracts.

(d) *Fee Determination Plans.* Award fee arrangements limited to technical performance considerations are prohibited because they may increase cost disproportionately to any benefits gained. Instead, the award fee arrangement shall include both technical performance (including scheduling as appropriate) and business management considerations tailored to the needs of the particular situation. In addition, in a situation where cost estimating reliability and other factors are such that the negotiation of a separate predetermined incentive sharing arrangement applicable to cost performance is detemined both feasible and advantageous, cost incentives may be added. The resulting contract would then be identified as a cost-plus-incentive-fee/award-fee combination type. The goals and evaluation criteria should be results-oriented. The award fee should be concentrated on the end product of the contract, that is, output, be it hardware, research and development, demonstration or services, together with business management considerations. However, input criteria such as equal employment opportunity, small business programs, functional management areas, such as safety, security, etc., should not be disregarded and may be appropriate criteria upon which to base some part of the award fee. Specific goals or objectives shall be established in relation to each performance evaluation criterion against which contractor performance is measured.

916.405 Contract clauses.

(e) For other than management and operating contracts, award fee contracts should include in the contract schedule the ARTICLES shown below. The ARTICLES may be modified to meet individual situations and any ARTICLE or specified requirement therein should be deleted when it is not applicable to a given contract. If substantial changes are believed appropriate, consultation with the Director, Office of Policy, Headquarters, is advisable.

ARTICLE (INSERT ARTICLE NUMBER)—ESTIMATED COST, BASE FEE, AND AWARD FEE

The estimated cost of this contract is $ (Insert Amount). A base fee of $ (Insert Amount) is payable in accordance with the ARTICLE entitled "Payment of Base and Award Fee." In addition, a maximum Award Fee of $ (Insert Amount) is available for payment in accordance with the ARTICLE entitled "Payment of Base and Award Fee."

ARTICLE (INSERT ARTICLE NUMBER)—PAYMENT OF BASE AND AWARD FEE

Base Fee. The government will make payment of the base fee in (Insert Number) increments. The amount payable shall be based on the progress as determined by the Contracting Officer and shall be subject to any withholdings as may be provided for elsewhere in this contract.

Award Fee. The government will promptly make payment of any Award Fee upon the submission, by the contractor to the Contracting Officer or his authorized representative, of a public voucher or invoice in the amount of the total fee earned for the period evaluated. Payment shall be made without the need for a contract modification.

ARTICLE (INSERT ARTICLE NUMBER)—DETERMINATION OF AWARD FEE EARNED

A. The government shall at the conclusion of each specified evaluation period(s) evaluate the contractor's performance for a determination of award fee earned. The contractor agrees that the determination as to the amount of award fee earned will be made by the government Fee Determination Official (FDO) and such determination concerning the amount of award fee earned is binding on both parties and shall not be subject to appeal under the "Disputes" clause or to any other appeal clause.

B. It is agreed that the evaluation of contractor performance shall be in accordance with the Performance Evaluation Plan referenced in the ARTICLE entitled "Performance Evaluation Plan" and that the contractor shall be promptly advised in writing of the determination, and the reasons why it was or was not earned. It is further agreed that the contractor may submit a self-evaluation of performance for each period under consideration. While it is recognized that the basis for determination of the fee shall be the evaluation by the government, any self-evaluation which is received within (Insert Number) days after the end of the period being evaluated, may be given such consideration, if any, as the FDO shall find appropriate.

C. The FDO may, in his sole discretion, specify in any fee determination that fee not earned during the period evaluated may be accumulated and be available for allocation and/or "Distribution of Award Fee" shall be adjusted to reflect such allocations.

ARTICLE (INSERT ARTICLE NUMBER)--PERFORMANCE EVALUATION PLAN

A. A contractor Performance Evaluation Plan upon which the determination of award fee shall be based, including the criteria to be considered under each area evaluated and the percentage of award fee, if any, available for each area, will be unilaterally established by the government. A copy of the plan shall be provided to the contractor (Insert Number) calendar days prior to the start of the first evaluation period.

B. The Performance Evaluation Plan shall set forth the criteria upon which the contractor will be evaluated for performance relating to any (1) Technical including Schedule requirements if appropriate, (2) Management, and (3) Cost Functions selected for evaluation.

C. The Performance Evaluation Plan may, consistent with the contract, be revised unilaterally by the government at any time during the period of performance. Notification of such changes shall be provided to the contractor (Insert Number) calendar days prior to the start of the evaluation period to which the change will apply.

ARTICLE (INSERT ARTICLE NUMBER)—DISTRIBUTION OF AWARD FEE

A. The total amount of award fee available under this contract is assigned to the following evaluation periods in the following amounts:

Evaluation Period ————————————

Available Award Fee ————————————

B. In the event of contract termination, either in whole or in part, the amount of award fee available shall represent a prorata distribution associated with evaluation period activities or events as determined by the Fee Determination Official.

The contract clauses required for cost reimbursement contracts should be modified for use under award fee contracts as cited below:

(i) The words "base fee and award fee" should be substituted for the term "fixed-fee" where it appears in the clause at FAR 52.243-2, Changes.

(ii) The words "base fee" should be substituted for the word "fee" where it appears in the clauses at FAR 52.232-20, Limitation of Costs, and FAR 52.232-22, Limitation of Funds.

(iii) The words "base fee, if any, and such additional fee as may be awarded as provided for in the schedule" should be substituted for the term "fee" wherever it appears in the clause at FAR 52.216-7, Allowable Cost and Payment.

[49 FR 11972, Mar. 28, 1984, as amended at 54 FR 48614, Nov. 24, 1989]

Subpart 916.6—Time-And-Materials, Labor-Hour, and Letter Contracts

916.603 Letter contracts.

916.603-2 Application.

(c) In accordance with FAR 16.603-2(c), a letter contract shall provide for definitization of the contract not more than 180 days after the date of award or after completion of 40 percent of the work to be performed, whichever occurs first, unless approved in advance by the Procurement Executive.

(d) In accordance with FAR 16.603-2(d), the amount of funds obligated under a letter contract shall not exceed 50 percent of the estimated cost of the definitive contract unless approved in advance by the Procurement Executive.

(f) Letter contract awards should be reported in the Procurement and Assistance Data System as soon after award as possible. Should it be necessary to modify a letter contract prior to its definitization, such actions shall be handled and reported as formal modifications as they occur. The actual definitization of the letter contract in turn, shall be accomplished by formal modification and be reported as such.

PART 917—SPECIAL CONTRACTING METHODS

Subpart 917.5—Interagency Acquisition Under the Economy Act

Sec.
917.502 General.
917.504 Ordering procedures.
917.505-70 Reimbursement by DOE.
917.505-71 Cost-reimbursement standards.

Subpart 917.6—Management and Operating Contracts

917.600 Scope of subpart.
917.604 Identifying management and operating contracts.
917.605 Award, renewal, and extension.

Subpart 917.70—Cost Participation

917.7000 Scope of subpart.
917.7001 Policy.
917.7002 Application.
917.7003 Amount of cost participation.

best copy available

pages tightly bound

Sec.
917.7004 Disposition of property and equipment furnished or acquired.
917.7005 Records.
917.7006 Payments under contracts with third party cost contributions.
917.7007 In-kind contributions.

Subpart 917.71—Special Research Contracts With Educational Institutions

917.7100 Scope of subpart.
917.7101 Definitions.
917.7102 General.
917.7103 Research program objectives.
917.7104 Other objectives.
917.7105 Unsolicited research proposals.
917.7106 Selection, preparation, and award.
917.7106-1 General.
917.7106-2 Responsibilities.
917.7106-3 Review of research proposals.
917.7106-4 Compensation for personal services of professional staff.
917.7106-5 Notice of selection or rejection.
917.7106-6 Selection of field office.
917.7106-7 Information to be furnished to field office.
917.7106-8 Changes in scope and level.
917.7106-9 Notification of contract execution.
917.7107 Contract content.
917.7107-1 General.
917.7107-2 Financial requirements.
917.7108 Personal property.
917.7108-1 Transfer of title to equipment to nonprofit educational or research institutions.
917.7108-2 Acquisition of excess Government personal property.
917.7108-3 Management of Government-owned equipment.
917.7108-4 Reports.
917.7109 Reporting requirements.
917.7109-1 Purpose of reports.
917.7109-2 Notice of Energy R&D Project.
917.7109-3 Progress reports.
917.7109-4 Technical reports.
917.7109-5 Special reports.
917.7109-6 Final report.
917.7109-7 Summary and distribution of reports.
917.7110 Dissemination of results.
917.7110-1 Prompt dissemination.
917.7110-2 Publication.
917.7111 Extension of contracts.
917.7111-1 Renewal proposals.
917.7111-2 Evaluation of requests for renewals.
917.7111-3 Authorization to renew.
917.7112 Administration.
917.7112-1 Responsibilities of program offices.
917.7112-2 Responsibilities of field offices.
917.7112-3 Payments under special research contracts.
Sec.
917.7112-4 Approval of deviations in performance and other specified actions.
917.7112-5 Auditing.
917.7112-6 Security.
917.7113 Format for Special Research Contracts (SRC) with educational institutions/or other nonprofit institutions.

Subpart 917.72—Program Opportunity Notices for Commercial Demonstrations

917.7200 Scope of subpart.
917.7201 Policy.
917.7201-1 General.
917.7201-2 Determination to use and approval of content.
917.7201-3 Federal support criteria.
917.7201-4 Information to be included in program opportunity notices.
917.7201-5 Information to be provided in proposals offered pursuant to program opportunity notices.
917.7202-1 Forms of assistance and participation.
917.7202-2 Cost participation.
917.7203 Method and criteria for evaluation and selection.
917.7204 Award or support.
917.7205 Unsolicited proposals for commercial demonstrations.
917.7206 Optional two-step method.

Subpart 917.73—Program Research and Development Announcements

917.7300 Scope of subpart.
917.7301 Policy and prerequisites.
917.7301-1 General.
917.7301-2 Determination to use and approval of content.
917.7301-3 Information to be included.
917.7301-4 Information to be provided in proposals.
917.7302 Cost participation.
917.7303 Method and criteria for evaluation and selection.
917.7304 Award or support.

Subpart 917.74—Acquisition, Use, and Disposal of Real Estate

917.7400 Scope of subpart.
917.7401 General.
917.7402 Policy.
917.7403 Application.
917.7404 Competition.

Subpart 917.75—Multiple Awards—Phased Acquisitions

917.7500 Scope of subpart.
917.7501 RFP provisions.
917.7502 Evaluation.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 11974, Mar. 28, 1984, unless otherwise noted.

Subpart 917.5—Interagency Acquisition Under the Economy Act

917.502 General.

The Head of the Contracting Activity shall make the determination prescribed in FAR 17.502.

917.504 Ordering procedures.

(b) DOE Form 1270.1, Order for an Interagency Acquisition, shall be used for interagency acquisitions. The order shall include an attachment addressing, as a minimum, the items listed at FAR 17.504(b) and the following:

(6) The parties to the interagency acquisition.

(7) Order number and/or modification number.

(8) Period covered by the interagency acquisition.

(9) Cost estimate of the interagency acquisition and the amount of funds to be provided by DOE including:

(i) The total etimated cost of the work for the period of time specified in the order;

(ii) The capital equipment, if any, approved for purchase under the subject acquisition; and

(iii) Limitations, if any, on the reimbursement of costs by DOE.

If DOE participates with another agency or agencies in sponsoring a project, the amount of contribution to be made by each agency and the basis for distributing the costs incurred shall be specified.

(10) Termination provisions that allow DOE to terminate the interagency acquisition upon 30 days written notice to the servicing agency. In the event of a termination, DOE may reimburse the servicing agency for costs actually incurred to the effective date of termination and for any commitments extending beyond the termination date (but not exceeding the expiration date of the order) that the servicing agency is unable to cancel.

(11) Appropriate patent provisions which recognize DOE's mission of achieving widespread availability and competitive commercial utilization of the benefits of DOE-funded research, development, and demonstration activities. Specific wording will vary depending on the agency and acquisition involved and must be obtained from the cognizant DOE patent counsel.

(12) Reporting requirements and technical data provisions, if appropriate, which require that technical reports prepared under the order to freely exchanged and made available for public sale, unless classified. Two copies of technical reports must be sent to the DOE Office of Scientific & Technical Information (OSTI), P.O. Box 62, Oak Ridge, TN 37830.

(13) Financial reports as determined by the contracting officer.

(14) Security provisions of 952.204, if appropriate, for those interagency acquisitions requiring access to/or generating classified information. (Revisions to the DEAR clauses will be required to effect the appropriate relationship between the servicing agency and DOE.)

[52 FR 38424, Oct. 16, 1987]

917.505-70 Reimbursement by DOE.

(a) Payment methods to reimburse the servicing agency shall be specified in the interagency acquisition. Such specified payment methods shall be coordinated with the servicing finance officer to ensure that they are consistent with current Department of Treasury Regulations as implemented by DOE.

(b) A consolidated working fund advance shall be used to finance small or medium construction projects or the acquisition of goods or services of lesser value from the servicing agency within the same fiscal year in which the advance is made, only after a determination has been made that the reimbursement basis is not to be used.

(c) An appropriation transfer shall be used to finance larger construction projects or the acquisition of more costly goods or services from the servicing agency where the work will extend beyond the fiscal year in which the transfer is made, only after a determination has been made that the reimbursement basis is not to be used.

[49 FR 11974, Mar. 28, 1984; 49 FR 38950, Oct. 2, 1984, as amended at 52 FR 38424, Oct. 16, 1987]

917.505-71 Cost-reimbursement standards.

(a) Incurred cost necessary or incident to the performance of the work of servicing agencies are to be considered allowable for cost-reimbursement purposes. Such costs include direct and, where applicable, indirect costs:

(b) Direct costs are the costs that can be directly identified with work under the acquisition. Examples of such costs are salaries and wages, technical services, materials, travel, transportation, communications, and any facilities and equipment expressly approved for purchase under the interagency acquisition.

(c) Indirect costs shall be limited to the properly allocable portion of costs that cannot be charged directly to the work, but can be shown as mutually benefiting the effort covered by the interagency agreement as well as other work of the servicing agency. Justification for any such charges shall be required, and the basis of allocation must be reasonable. Where interagency acquisitions are entered into under authority of section 601 of the Economy Act of 1932, the servicing agency's charge for any indirect costs may include appropriately allocable charges for "general administration" or "central agency overhead," but only to the extent specified in the acquisition.

(d) The servicing agency shall be responsible for maintenance, safeguarding, control, and accounting of capital equipment (items of equipment expected to have an extended period of service, generally a year or more and generally having a value of $1,000 or more) in a manner satisfactory to DOE. DOE reserves the right of first refusal for any capital equipment acquired under the interagency acquisition at completion or termination of the interagency acquisition.

(e) Unless authorized by the contracting officer in advance, the servicing agency shall not be reimbursed for the acquisition or condemnation of real property or any facility or plant construction or expansion.

[49 FR 11974, Mar. 29, 1984, as amended at 52 FR 38424, Oct. 16, 1987]

Subpart 917.6—Management and Operating Contracts

917.600 Scope of subpart.

This subpart implements FAR Subpart 17.6, Management and Operating Contracts. DOE implementing procedures and requirements to be followed in the selection, award, and administration of Management and Operating Contracts are at Part 970.

917.604 Identifying management and operating contracts.

(a) Single purpose contracts for the operation of process development units, pilot plants, and demonstration plants where the purpose is to demonstrate the viability of processes toward the goal of commercialization are not considered to be included, unless designated operating contracts in accordance with FAR 17.602.

917.605 Award, renewal, and extension.

(b) The decision to extend or compete management and operating contracts requires advance Headquarters' approval. The Head of the Contracting Activity will submit a memorandum that recommends either extending or not extending a management and operating contract. This memorandum of recommended action, together with attachments supporting it, will be submitted at least 18 months prior to expiration of the contract. The attachments shall include the following information:

(1) A full and complete justification of the recommendation that is made, i.e., either to obtain competition or to extend the contract without obtaining competition. This justification must address the policy stated in FAR 17.605.

(2) A statement of the present contractor's overall performance since award of the contract, or if previously extended, since Headquarters' last authorized extension of the contract. This should be supported by a detailed summary of the most recent appraisal of the contractor's performance.

(i) The technical appraisal shall include data which indicates the contractor's success or failure in meeting established program goals and objectives during the appraisal period. It is recognized that in some cases, the contracting office will not have the technical staffing necessary to perform an appraisal of the scientific and technical work under the contracts they are administering, as in the case with the contracts for the operation of DOE's national laboratories. When this is the situation, the contracting office shall obtain the necessary technical appraisal information from the appropriate Headquarters' program division(s) for incorporation into the overall management appraisal.

(ii) The cost appraisal shall include data that indicates the contractor's success or failure in controlling both direct and indirect costs.

(iii) Where the contract is a cost-plus-award-fee (CPAF) or similar arrangement, include a discussion of award fee experience since the date that the contract was last extended, showing the base fee, award fee pool, award fee appraisals, and award fee earned.

(iv) A separate appraisal shall be made of the contractor's performance in assuring consideration of environmental, safety, health, energy conservation and security in operating the facility and development of products.

(3) The justification for use of the contract type contemplated, including discussion of consideration given to use of the CPAF type contract.

(4) Summary description of scope of work and brief listing of some of the important projects which have been performed under this contract. A list of any important projects planned for assignment in the future should be included as well as the current institutional planning documents if applicable or other documents that indicate the area of work to be performed during the contract period.

(5) The actual cost expenditures and fee or management allowance over the past contract period and expected costs in the future.

(6) While a copy of the proposed contract document should not be submitted with the recommendation, Headquarters should be advised of the following:

(i) Any special or unique features (with brief supporting rationale) in the existing contract expected to be continued in either the extension of the existing contract or in the replacement contract. This shall include any provisions which deviate from standard clauses.

(ii) An outline of the principal issues to be negotiated if the contract is extended, with arguments pro and con, and with a recommended position. This should include the identification of any anticipated problem areas for which Headquarters guidance is needed and should also include a justification for any clauses which deviate from standard clauses and continued use of deviations granted in the past.

(d) If Headquarters makes the decision to extend the existing contract without obtaining competition, the contracting officer will be authorized by the Head of the Agency to negotiate an extension to the contract. The contracting officer shall submit the negotiated contract to Headquarters for the approval of the Procurement Executive prior to execution. The proposed contract document shall be accompanied by the following:

(1) A complete justification as required above;

(2) A summary of the major clauses of the proposed contract with particular attention to indemnity, patents, and conduct of work (including clauses concerning control over work and termination). Any deviations from current FAR and DEAR policies or standard contract clauses should be identified with the reasons therefore;

(3) A listing of any significant changes from the existing contract.

Subpart 917.70—Cost Participation

917.7000 Scope of subpart.

(a) This subpart sets forth the DOE policy on cost participation by organizations performing research, development, and demonstration projects under DOE prime contracts. This subpart does not cover efforts and projects performed for DOE by other Federal agencies.

(b) Cost participation is a generic term denoting any situation where the Government does not fully reimburse the performer for all allowable costs necessary to accomplish the project or effort under the contract. The term encompasses cost sharing, cost matching, cost limitation (direct or indirect), participation in kind, and similar concepts.

917.7001 Policy.

(a) When DOE supports performer research, development, and demonstration efforts, where the principal purpose is ultimate commercialization and utilization of the technologies by the private sector, and when there are reasonable expectations that the performer will receive present or future economic benefits beyond the instant contract as a result of performance of the effort, it is DOE policy to obtain cost participation. Full funding may be provided for early phases of development programs when the technological problems are still great.

(b) In making the determination to obtain cost participation, and evaluating present and future economic benefits to the performer, DOE will consider the technical feasibility, projected economic viability, societal and political acceptability of commercial application, as well as possible effects of other DOE-supported projects in competing technologies.

(c) The propriety, manner, and amount of cost participation must be decided case-by-case.

(d) Cost participation is required for demonstration projects unless exempted by the Under Secretary. Demonstration projects, pursuant to this subpart, include demonstrations by technological advances and field demonstrations of new methods and procedures, and demonstrations of prototype commercial applications for the exploration, development, production, transportation, conversion, and utilization of energy resources.

917.7002 Application.

(a) The DOE cost participation policy set forth in 917.7001 applies to all prime contracts to the extent stated therein.

(b) Cost participation is not contemplated in contracts for the operation of Government-owned or leased, contractor-operated facilities or continuing cost-reimbursement type contracts for mission-oriented, large-scale research programs performed, using equipment or facilities which are either partially or wholly Government-owned.

(c) Potential benefits to a performer is less likely where basic research is involved and therefore cost participation, if any, is expected to be less than in circumstances where a product is being developed. As projects or proposed efforts reach stages approaching commercial viability, cost participation should be based on the overall project risk.

(d) Except for demonstration projects, the requirement for a cost participation contract in accordance with 917.7001 may be waived by the cognizant Program Assistant Secretary where it is determined that payment of the full allowable cost of the contractual effort is in the best interests of the Government.

(e) The performer's cost participation may be provided by other companies or associations with which it has contractual arrangements to perform the project. The fact that a project is jointly funded, e.g., where DOE and an industry association fund a third party performer, does not preclude cost participation by the performer.

917.7003 Amount of cost participation.

(a) Cost participation may be in various forms or combinations, which includes but is not limited to cash outlays, real property, or interest therein, needed for the project, personal property or services, cost matching, foregone fee, or other in-kind participation. Cost participation may include the value of contributions of other non-Federal sources, provided the contributions were not previously obtained free of charge from Federal sources. The value of any noncash contribution shall be established by DOE after consultation with the performer. Cost participation may be accomplished by a contribution to either direct or indirect costs provided such costs are otherwise allowable in accordance with the cost principles of the contract. Allowable costs which are absorbed by the performer as its share of cost participation may not be charged directly or indirectly to the Federal Government under other contracts, agreements, or grants.

(b) Organizations should contribute a reasonable amount of the total project cost covered under the contract. The ratio of cost participation should correlate to the apparent advantages available to performers and the proximity of implementing commercialization. In setting the levels of cost participation by the performer, the contracting officer, in consultation with the program office, should consider such factors as:

(1) The availability of the technology to the performer's competitors;

(2) The risks involved in achieving commercial success;

(3) The length of time before the project is likely to be comnmercially successful;

(4) Improvements in the performer's future commercial competitive position;

(5) Disposition of property at project's end;

(6) Whether the potential benefits will be lessened if the performer lacks production or other capabilities with which to capitalize the results of the project. However, if the results of the project are transferable to commercial organizations with production capabilities, and the performing organization would obtain patent of other property rights which could be sold or licensed, this should be considered; and

(7) Whether the performing organization lacks adequate non-Federal sources of funds from which to make cost participation.

(c) The manner of cost participation and how it is to be accomplished shall be set forth in the contract.

(d) The handling of any return from sale of products from the project shall be set forth in the contract.

(e) The solicitation document shall state whether any cost participation is required and may set forth a target level of cost participation. Though technical considerations are normally most important the degree of cost participation will be considered when cost to the Government is to be a major factor in a selection decision.

(f) Unsolicited proposals will be considered on a case-by-case basis by the program office, in consultation with contracting officer, as to the appropriateness of cost participation. If cost participation is considered to be appropriate, guidance for determining an appropriate level may be included in the procurement authorization package. The extent and type of cost participation is subject to negotiation, however.

(g) The extent to which a performing organization contributes to the cost of a project will be taken into consideration in the allocation of patent rights under DOE's waiver policy.

(h) Fee or profit will not be paid the performer under a cost participation contract. Foregone fee or profit will be considered in establishing the degree of cost participation.

(i) Where cost participation is appropriate, fee or profit will not be paid to any member of the proposing team having a substantial and direct interest in the project. Competitive subcontracts placed with the prior written consent of the contracting officer and subcontracts for routine supplies and services are not covered by this prohibition.

917.7004 Disposition of property and equipment furnished or acquired.

Disposition instructions for any property and equipment furnished or acquired using Federal funds during performance shall be set forth in the contract.

917.7005 Records.

Contracts which provide for cost participation shall require the contractor to maintain records adequate to reflect the nature and extent of their cost contribution as well as those costs charged to DOE. Such records shall be subject to audit by DOE.

917.7006 Payments under contract with third party cost contributions.

Arrangements between DOE and non-Government organizations for jointly sharing the cost of projects performed by third party contractors shall provide that each party to the cost sharing agreement shall pay its share of program costs directly to the performing contractor. Any alternative arrangement must be approved in advance by the Controller or designee.

917.7007 In-kind contributions.

(a) In-kind contributions represent noncash contributions provided by the performing contractor or a non-Federal third party who is participating with DOE in a co-sponsored project or contract. In-kind contributions may be in the form of personal property (equipment and supplies), real property (land and buildings) or services which are directly beneficial, specifically identifiable and necessary to performance of the project or program.

(b) In-kind contributions proposed to the DOE as part of a performer's cost participation must meet all of the following criteria before acceptance:

(1) Be verifiable from the performer's books and records, if performer donated;

(2) Not be included as contributions for any other Federal program;

(3) Be necessary to effective and efficient accomplishment of project objectives;

(4) Provide for types of charges that would otherwise be allowable under applicable Federal cost principles appropriate to the contractor's organization; and

(5) Not be paid for by the Federal Government under any contract, agreement or grant, unless specifically authorized by legislation.

(c) In-kind contributions accepted from a performer will be valued as set forth below provided the established values do not otherwise exceed fair market values.

(1) Where the Government receives title to donated land, buildings, equipment or supplies and the property is not fully consumed during performance of the co-sponsored project, the property's in-kind value should be established based on the performer's booked cost (i.e., acquisition cost less depreciation, if any) at the time of donation. In the event the booked costs reflect totally unrealistic values when compared to current market conditions, another appropriate value may be established if supported by an independent appraisal of the fair market value of the donated property or property in similar condition and circumstance.

(2) The value of any services or the use of personal or real property donated by a performer should be established, when necessary to do so, in accordance with generally accepted accounting policies and the appropriate Federal cost principles applicable to the performer's organization.

(d) Values established for in-kind contributions accepted from a non-Federal third party should be reasonable and shall not exceed the fair market value of the item at the time of donation. Specific requirements for selected in-kind items involving third party donors are as follows:

(1) *Donated Employee Services.* Employee services donated by a non-Federal third party shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and indirect costs) provided the donated services require use of the same skills for which the employee is normally paid. Otherwise, the rate of pay, for valuation purposes, shall be consistent with the rates paid for similar work in the labor market in which the performer competes for such skills.

(2) *Volunteer Services.* Rates used to value volunteered personal services of professional, clerical, or other individuals should be consistent with those regular rates paid by the performer for similar work and be established in accordance with the procedures specified in subparagraph (1) above.

(3) *Property.* Values for personal or real property, or the use thereof, donated by a non-Federal third party shall be established, dependent upon the donor's intended disposition of the property upon project completion, as follows:

(i) When title is donated at no cost to the Government or the property will be fully consumed during project performance, a reasonable value not in excess of the fair market value of the donated property, or comparable property in similar condition, shall be established provided the fair market value of land or buildings is established by an independent appraisal.

(ii) When title is retained by the donor or acquired by the performer, reasonable usage values not in excess of the fair rental value of the donated property or comparable property shall be established provided the fair rental value of donated space is established by an independent appraisal.

Subpart 917.71—Special Research Contracts With Educational Institutions

917.7100 Scope of subpart.

This subpart sets forth policies and procedures applicable to the negotiation and administration of Headquarters-designated special research contracts for basic research with educational or other nonprofit institutions. These policies and procedures should also be followed for Headquarters-designated contracts for applied research with educational institutions and for educational and training activities with educational or other nonprofit institutions. The policy of reimbursing only DOE's share of actual costs up to a ceiling should be reflected in all contracts with educational institutions. The procedures in this subpart regarding acceptance of unsolicited proposals from educational institutions and use of the special research contracts may be used only when the annual DOE support does not exceed $1,000,000. If the annual DOE support exceeds $1,000,000, or a determination is made under the provisions of Pub. L. 95-224 that a grant or cooperative agreement is to be used as the instrument for providing support regardless of the dollar amount, then a special research contract may not be used. If the annual DOE support exceeds $1,000,000, and a contract is determined to be the instrument to provide such support, an appropriate type contract will be used in accordance with FAR 16, with clauses as prescribed in 952 and FAR 52 and the coverage of 917.7108.

917.7101 Definitions.

"Headquarters-designated contract" means a special research contract which results from an authorization to a field office from a Headquarters office to enter into or continue such a contract on the basis of an approved research proposal.

"Contractor" means the educational or nonprofit research organization which enters into a contract with DOE for the performance of specified research.

"Research proposal" means a request by or an unsolicited proposal as defined in FAR 15.501 from an institution for support of a research project, together with a detailed description of the project and its relationship to DOE's program, and detailed information as to background and experience of principal investigators, facilities, and environment of the institution, and cost and cost-sharing arrangements, if any.

917.7102 General.

The DOE, by statute, is permitted to participate in research programs that are related to atomic and other forms of energy.

917.7103 Research program objectives.

(a) Under sections 31 and 31a of the Atomic Energy Act of 1954, as amended, DOE is directed to exercise its powers in such manner as to ensure the continued conduct of research and training activities and to assist in the acquisition of an ever-expanding fund of theoretical and practical knowledge in the following fields:

(1) Nuclear processes;

(2) The theory and production of atomic energy, including processes, material, and devices related to such production;

(3) Utilization of special nuclear material and radioactive material for medical, biological, agricultural, health, or military purposes;

(4) Utilization of special nuclear materials, radioactive material, and processes entailed in the utilization or production of atomic energy or such material for all other purposes, including industrial and commercial uses, the generation of usable energy and the demonstration of advances in the commercial or industrial application of atomic energy;

(5) The protection of health and the promotion of safety during research and production activities; and

(6) the preservation and enhancement of a viable environment by dev-

leoping more efficient methods to meet the nation's energy needs.

917.7104 Other objectives.

(a) Headquarters-designated special research contracts are entered into by negotiation under the authority of section 31c of the Atomic Energy Act of 1954 and section 302(c)(5) of the Federal Property and Administrative Services Act of 1949. In planning, negotiating, and administering such contracts, the objectives are to:

(1) Assure a continuing flow of new knowledge in fields related to the responsibilities of DOE;

(2) Respect the traditions of the contracting institution and encourage the quest for new knowledge without restrictions or scientific initiative, to the extent compatible with the laws and the protection of the public interest;

(3) Provide reasonable levels of support which will increase the national capability in energy fields and enable the contracting institution to strengthen its research programs in areas of interest to DOE; and

(4) Maintain effective contact with the scientific community so that:

(i) Scientists and students will be encouraged to expand their interests in fields of importance to DOE;

(ii) The scientific strength of the country can be brought to bear more effectively on DOE problems;

(iii) The DOE will be continuously aware of developments of value to its activities in the academic communities; and

(iv) An adequate supply of suitably trained scientists will be available for employment to meet energy program needs.

(b) The contractor is responsible for conducting the research and is expected to carry out the project or projects in a manner consistent with the agreed-upon objectives and requirements. These include the obligation to comply with applicable laws and regulations. The contractor is generally expected to follow its normal business practices and to use its existing accounting system.

917.7105 Unsolicited research proposals.

Unsolicited proposals for DOE assistance may be initiated by scientists interested in doing research. Prior to submitting proposals, the interested scientists, at his or her initiative may discuss the project informally with DOE.

Following such discussions, the proposal should be submitted in accordance with FAR Subpart 15.5 and 915.506 of this chapter. If the DOE desires to solicit proposals, the procedures in 917.73 or other existing solicitation procedures will be used.

917.7106 Selection, preparation, and award.

917.7106–1 General.

In order to maintain a comprehensive and well-integrated research program, evaluation of research proposals and selection of educational institutions to conduct scientific research is centralized in Headquarters program office. However, field offices may be assigned responsibility for handling the final arrangements and nontechnical administration of such contracts.

917.7106–2 Responsibilities.

(a) The program office interested in particular research is responsible for evaluating the technical aspects of the proposals. The program office must determine that the proposal has sufficient technical merits and program value in comparison to other available proposals to justify providing support. This includes judgments as to the merit of the proposed research objectives, the probability of achieving the objective(s), the capabilities of the researchers, and how the proposals will specifically promote the objectives in 917.7103 and 917.7104. The program office also reviews the proposer's requested cost and other estimates to determine the reasonableness, the propriety, and the advisability of proceeding with the project. Specifically, Senior Program Officials or their designees at Headquarters are responsible for:

(1) Selecting and approving research proposals and determining the amount to be funded;

(2) Documenting the rationale for funding in accordance with (a) of this section;

(3) Assuring that the statement of work is clear and complete;

(4) Providing a copy of the documents prepared in (a)(2) and (3) to the field office;

(5) Reviewing the items in the proposal budget or itemized account of the proposed work, and, if necessary, requesting the assistance of the appropriate field office;

(6) Determining the ownership of property;

(7) Reviewing and following the technical progress of the work;

(8) Providing contractors with the technical guidance and direction as may be required to meet broad program objectives; and

(9) Keeping the field offices fully informed of technical correspondence and discussions with contractors that may have contractual or non-technical administrative implications.

(b) Field offices are responsible for the consummation of contracts with the institution in accordance with directives from the program office, and for administering and making payments under such contracts. Specifically, field offices are responsible for:

(1) Performing any necessary cost or price analysis, obtaining audit service when needed, and negotiation of budget and contract terms;

(2) Finalizing and executing the contract (where necessary, obtaining further instructions from the program office);

(3) Administering the contract in accordance with its terms and conditions and making payments thereunder; and

(4) Providing technical and administrative assistance requested by program officials.

917.7106-3 Review of research proposals.

(a) If, in the judgment of the program office, an appraisal from representatives of the scientific community is required, reviewers may be selected on the basis of their familiarity with either the field of research or the competence of the investigator. See also 924.70.

(b) Occasionally, the program office may find it necessary to obtain additional information from the research institution or to visit the site. In some cases, the comments, assistance, or participation of staff members of the appropriate field office will be requested.

(c) At the time it reviews a research proposal, the sponsoring program office shall review the prospective contractor's budget or itemized account of the proposed work and activities and the materials, equipment, and facilities involved, for the purpose of reaching mutual understanding of the estimated cost of the research and the other major aspects of the contemplated contract. Questions about the cost elements that required further investigation may be referred to the appropriate field office when the contract is authorized.

(d) When reviews are conducted by representatives who are not Government employees, the policies for avoidance of organizational conflicts of interest in 909.5 shall be followed.

917.7106-4 Compensation for personal services of professional staff.

Compensation for personal services of professional staff must be in accordance with Office of Management and Budget Circular A-21, revised. The certification required by Appendix C of 917.7113 fulfills the certification requirement of section K of OMB Circular A-21 for the special research contract.

917.7106-5 Notice of selection or rejection.

The program office shall notify the proposer of the decision to fund or reject the proposal. In the event of a decision to fund, this notification shall advise: (a) That the proposal has been selected for funding subject to completion of a satisfactory contract; (b) which field office will negotiate and execute the contract; and (c) that DOE assumes no obligation until a contract has been executed. A copy of the notice of acceptance or rejection shall be sent to the field office concerned. The notice shall indicate the basis for rejection and shall constitute DOE's record of action for the files. If the proposal is accepted, a justification shall be prepared in accordance with 917.7106-2.

917.7106-6 Selection of field office.

(a) When the program office has determined that a proposal shall be funded, a field office shall be requested to make the final arrangements with the institution concerned. Usually the field office geographically nearest to the research institution will be selected, but occasionally other factors such as existing contractual relationships and location of the research project will make the selection of some other field office desirable.

(b) Traineeship agreements under the nuclear science and engineering traineeship program are exempt from the policy in (a) and shall continue to be assigned to the Oak Ridge Operations Office. Research contracts with foreign educational institutions shall be assigned to the Chicago Operations Office.

(c) Any transfers of assignments between field offices will be accomplished when the particular contract is next renewed or otherwise modified.

917.7106-7 Information to be furnished to field office.

The sponsoring program office shall provide the Contracting Activity with an authorizing directive early enough (generally 60 days) to permit timely completion of the contract award before the work is scheduled to start. The following shall be furnished:

(a) A copy of the detailed proposal and any modifications;

(b) Copies of correspondence with the research institution that are pertinent to the completion of the negotiation or that have some specific significance as to the preliminary review of arrangements made with the institution; and

(c) An authorizing directive which:

(1) Authorizes the execution of a special research of contract for a specified term, with DOE support limited to a specified amount or a specified percentage of costs up to a specified support ceiling;

(2) Summarizes the background of the proposal and any pertinent discussion not reflected in the papers attached to the memorandum;

(3) Indicates the extent to which the scope of the work proposed has been approved;

(4) Indicates the principal investigator and other necessary details;

(5) Determines the availability of legal authority to transfer title to property and indicates the total estimated cost of the research and other major aspects of the contract, by reference to the proposal or otherwise;

(6) Indicates whether title to property to be acquired under the contract is to be vested in DOE or the contractor;

(7) Indicates whether restricted data or other classified information is likely to be used or developed in the course of the work and such classification and security determination as may be appropriate;

(8) Indicates directions for special reports, if any;

(9) Gives such additional information as may assist the field office in negotiating the contract; and

(10) Designates the appropriate organizational unit and individual in the program office that will have technical cognizance over the work under the contract.

917.7106-8 Changes in scope and level.

After a contract has been authorized by the program office but prior to execution, the field office shall not approve any significant change in technical scope, funding, specified result, performance, principal investigator, or other major aspects of the work without prior approval of the program office.

917.7106-9 Notification of contract execution.

Promptly after execution of a contract, the program office shall be notified of such action.

917.7107 Contract content.

917.7107-1 General.

A standard outline (format) for a special research contract for research performed in facilities owned and controlled by the contractor (as distinguished from Government-owned or Government-controlled facilities), is set forth in 917.7113. This document is intended to provide a vehicle by which research tasks can be accomplished with a minimum of administrative effort. It is, therefore, important that such contracts be written so as to assure the complete understanding of the parties as to the job to be performed and the financial and administrative details connected therewith. Of special consideration is the nature of research contracting as contrasted to the acquisition of supplies and activities of a production nature. Wide latitude in the conduct of research by the institutions is generally desirable and the standard contract forms are designed to permit such latitude in the establishment of the rights and obligations of the parties.

917.7107-2 Financial requirements.

(a) The special research contract outlined in 917.7113, is generally used for basic research with educational institutions when the annual DOE support under the contract does not exceed $1,000,000. It provides that DOE's monetary obligations will be a specified amount, which is referred to as the support ceiling, or a lower adjusted amount (referred to as the cumulative support cost) if actual costs chargeable to DOE during the total period of the contract are less than expected. The ceiling on DOE's monetary support shall be determined and established as a support ceiling at the outset of the initial contract period.

(1) The total contract period of performance should be established based upon the estimated period of performance necessary to accomplish the research effort. If available funding is less than that needed to fully fund the effort, the available funding will be provided as the cumulative Government cost as defined at Article A-III(b) of 917.7113 with the remainder of the funding subject to the availability of funds.

(2) In such circumstances the standard Special Research Contract format provided at 917.7113 shall be revised at Article II, The Period for Performance, to indicate the period of time for which the available funding is estimated to suffice and at Article A-III to show the additional funding to be provided subject to the availability of funds.

(b) If the parties agree to extend the contract for an additional period or periods of performance, the ceiling on the DOE's funding (Government ceiling) shall be increased to reflect any increased support by reason of the extended period or periods. The costs chargeable to the DOE (Government cost) will be reported for each pertinent period of the contract specified in Appendix A (generally an annual period) in accordance with paragraphs (b), (c), and (d) of this section, and the Government cost determined for each such period will be accumulated for all periods of performance, as will the Government ceiling.

(1) The monetary obligation to the contractor will not exceed the cumulative Government cost or the accumulated Government ceiling, whichever is less.

(2) Upon termination, or expiration of the total period of performance, the contractor must refund to DOE, or make such other disposition as the contracting officer may direct, any funds advanced in excess of the cumulative Government cost incurred under the contract. Payment shall be made in consideration of the contractor's performance of research activities described in the contract and in accordance with the provisions of the contract.

(3) The contractor shall have the right to discontinue performance of research under the contract, upon written notice to the contracting officer, at any time when or after the total costs chargeable to DOE equal or exceed the cumulative Government cost or the Government ceiling whichever is less.

(4) Certain deviations in performance and other actions require the contracting officer's approval as stated in 917.7113. Among other approval requirements, the contractor must obtain the contracting officer's approval to incur costs for items set forth in Article A-II(a), during the pertinent period stated in Appendix A, in excess of 110 percent of the total estimated cost specified in Article A-III for the specific period. In those cases in which there is to be proportionate sharing of costs, the percent of the cost to be borne by DOE will be set forth in Article A-III of the agreement (see paragraph (d) of this section).

(c) The contractor shall be required to furnish a certified statement (within three months after the expiration of the pertinent contract period set forth in 917.7113, Appendix A and at the termination of or expiration of the contract), signed by an authorized official, showing the total cost, Government cost, and contractor's contribution, if any, for the prior contract period. The format for this report is found in 917.7113, Appendix C.

(d)(1) It is expected that in many cases the contractor will propose to contribute to the cost of the research work. Such contribution shall be set forth in Appendix A of the contract, either as items under (b) or (c) of Article A-II which will be contributed solely by the contractor without charge to DOE, or as a proportionate cost-sharing agreement in Article A-III which will provide that the contractor will charge DOE only a specified percentage of the actual cost incurred from items under (a) of Article A-II.

(2) Proposed contractor contributions should ordinarily be listed under (b)(1) of Article A-II when:

(i) The contribution is that of the principal investigator or other senior personnel who are likely to be involved in the research work to the same extent whether their cost is included in or excluded from proportionate cost sharing;

(ii) The proposed contribution to the work is being paid for by a third party; e.g., personnel or equipment, the cost of which is being reimbursed under another contract or grant from public or private sources; and

(iii) The proposed contribution does not involve any cash expenditure by the contractor.

(3) Only those items, the cost of which is to be charged to DOE or proportionately shared by the parties, should be listed under Article A-II(a). Proportionate sharing of the cost of items under Article A-II(a) should be provided for only when the contractor agrees to pay a specified percentage of the cost of all such items, and when such sharing is expected to be of financial benefit to DOE.

(4) In those cases in which there is to be proportionate cost-sharing, the contractor should generally be encouraged to continue the same sharing ratio througout the life of the contract so as to provide for ease of administration and to avoid difficulties in determining proper charges to DOE. It should be understood that the DOE will pay only the specified percentage of the actual cost of items under Article A-II(a) incurred during the pertinent period specified in Appendix A, up to a maximum of 110 percent of the estimated Government cost set forth in Article A-III for the pertinent period unless otherwise specifically approved by DOE and subject to the Government ceiling set forth in Article III.

(e)(1) If the contractor proposes to contribute the cost of the principal investigator(s) on the project and requests that the contribution be excluded from A-II(b), the contributed time or effort should be shown in A-II(d). The contractor shall not be required to maintain records regarding the amount of effort contributed by the principal investigator, and the contractor shall not be required to certify, in accordance with Appendix C of the contract, the amount of effort contributed by the principal investigator.

(2) The principal investigator may be included in Article A-II(a) for purposes of obtaining reimbursement of costs during the summer months, and excluded from Article A-II(a) for academic year if the contractor proposes to contribute the costs for that period. The contract generally will not require the contractor's commitment that any particular amount of time or effort by the principal investigator(s) or other personnel will be devoted to the work.

(3) In the event a proposed contractor contribution is included in Article A-II(b)(1), the contract should reflect the nature and extent of the contractor's intent to contribute the item, and the contractor shall maintain records adequate to permit DOE to determine the extent of the contribution. The contractor must certify, in accordance with Appendix C of the contract, the extent to which the item or items under Article A-II(b)(1) have been contributed.

(4) Government-owned property to be procured, fabricated, or furnished

under Article IV or Article B-IX of the contract and other Government-furnished equipment, supplies, materials, or services should be excluded from Article A-II(a) and listed under Article A-II(b)(2).

(f) When the special research contract outlined at 917.7113 is used for nonprofit organizations other than educational institutions:

(1) Article B-XXIX, Determination of Support Cost, should be revised to provide that the nonprofit cost principles (Subpart 931.7) will be used in determining actual cost, or

(2) Revised at the direction of the cognizant Headquarters office to provide for a lump-sum payment to the contractor in consideration for its performance of particular research at a specified level of effort.

(g) The special research contract outlined in 917.7113 may also be used to fund research at educational institutions in foreign countries; when so used:

(1) The outline of 917.7113 may be revised at the discretion of the cognizant Headquarters or field office, to provide for a lump-sum payment to the foreign institution in consideration of its performance of particular research at a specified level of effort.

(2) Approval requirements shall be limited to those consistent with the nature of the support to the foreign institution.

(3) All such contracts with foreign institutions shall provide that any unused funds available to the foreign institutions at the end of the contract shall be used in a renewal period, returned to the DOE, or otherwise disposed of, in accordance with instructions from the contracting officer.

917.7108 Personal property.

917.7108-1 Transfer of title to equipment to nonprofit educational or research institutions.

(a) In accordance with Pub. L. 95-224, DOE has discretionary authority, where it is deemed to be in furtherance of the objectives of DOE to vest in nonprofit institutions of higher education or nonprofit organizations whose primary purpose is the conduct of scientific research, without further obligation to the Government or on such other terms and conditions as may be appropriate, title to equipment purchased or fabricated with contract funds.

(b) It is deemed to be in the furtherance of the objectives of DOE, pursuant to Pub. L. 95-224, to vest in those educational and nonprofit institutions title to equipment purchased or fabricated with contract funds for research. This will promote the progress of scientific research, reduce the amount of expense and unnecessary labor due to the necessity for maintaining records, transporting, or storing such property which is often unsuitable for any other use. Contracting officers (coordinating with program officials) shall impose such terms or conditions as they determine to be appropriate in individual cases.

(c) The vesting of title to equipment, fabricated or purchased for work to support a SRC shall be as follows:

(1) Contracts with nonprofit institutions of higher education or nonprofit organizations whose primary purpose is the conduct of scientific research, shall provide that title to equipment having an acquisition cost of less than $1,000 and purchased or fabricated with contract funds available for the conduct of basic and applied research rest in the contractor at acquisition, provided prior approval of the purchase is obtained from the contracting officer. This prior approval may be in the form of an approved budget which calls out the equipment to be acquired, either on a line-item basis or for clearly defined classes of items, or by other means, as long as the contracting officer can determine that the proposed acquisition is essential to the performance of the contract. Title to such equipment shall vest in the contractor upon acquisition or as soon thereafter as feasible.

(2) Contracts with those institutions cited in (1) of this section shall provide that title to equipment having an acquisition cost of $1,000 or more, and purchased with contract funds available for the conduct of basic and applied research, shall vest in the institution upon acquisition or as soon thereafter as feasible without further obligation to the Government, unless

it is determined not to be in furtherance of the objectives of DOE and is provided for in the contract. The contract may reserve the right of the Government to transfer title of equipment costing $1,000 or more per unit to the Government or to a third party named by the Government, at any time prior to final payment under the contract.

(d) When title to equipment is vested in the institution as provided in this subsection, the institution shall not be reimbursed for any depreciation, amortization, or use charges with respect to such equipment under any Government contract, cooperative agreement, grant or any subcontract under a Government contract.

(e) The determination to vest title in the institution under this subsection will be provided by the cognizant program office on the procurement request, or other appropriate document.

(f) In addition to the authority referred to in paragraph (a) of this subsection, the Atomic Energy Act of 1954, as amended, authorized DOE to vest title to items of equipment and other personal property in a contractor when the transfer serves a nuclear programmatic purpose. When applicable programmatic determination to transfer title to the institution will be provided by the cognizant program office and made a part of the official contract file.

917.7108-2 Acquisition of excess Government personal property.

(a) The utilization of certain items of excess Government personal property by educational institutions is encouraged in the interest of conserving funds otherwise designated for similar items of property in existing research contracts or agreements with such institutions. Excess Government personal property includes all types of equipment and materials, used or new, which are owned by the Federal Government and are no longer needed by the holding Federal agency, but have additional useful life.

(b) Consistent with GSA regulations, excess personal property may be furnished to a contractor (with or without transfer of title) upon authorization by DOE, provided a determination is made that acquisition will result in a reduction in the cost to the Government of the contract. This procedure will not normally be used for the acquisition of general purpose equipment (e.g., desks, typewriters, air conditioners).

(c) Contractors shall be advised they may obtain information concerning the availability of certain kinds of equipment or materials by requesting the contracting officer to include them on the GSA mailing list for excess property catalogs. When an item of equipment or material is selected, the contractor should reserve it by notifying the cognizant GSA office and confirming the reservation in writing. Availability is usually on a first-come, first-serve basis, but GSA will give preference in a competing situation to those agencies which do not vest title to property in the contractor. The contractor should then submit a Standard Form 122, Transfer Order Excess Personal Property, to the cognizant DOE office, accompanied by a written justification of need, including the estimated cost of acquisition (e.g., packing, shipping, installation, rehabilitation, etc.), signed by the principal investigator and an authorized administration official. The written justification shall contain a statement as to whether or not the contractor desires title to the property under the authority of the Atomic Energy Act and 917.7108-1(g). If the acquisition is approved, the DOE office shall forward the SF-122 to the appropriate GSA office with a notation as to whether or not DOE intends to vest title to the property in the contractor. A copy of the approved SF-122 with the notation regarding the vesting of title shall be returned to the contractor. When the property is received, the contractor shall forward to the DOE office a receipted copy of the SF-122 which lists the items of property.

(d) In those instances where the contractor's acquisition of title has been approved by DOE, title to the property shall pass to the contractor when the receipted SF-122 is received by the DOE office, pursuant to Article B-IX(b), Property Items, of 917.7113. Contract funds may be used to pay for necessary costs of packing, transportation, installation, rehabilitation, and maintenance, if required.

(e) In those instances where the contractor did not desire title or where the cognizant DOE office has determined that title to the excess property should remain in the Government, the property will be handled as Government property in accordance with Article B-IX of 917.7113.

917.7108-3 Management of Government-owned equipment.

When title to equipment is retained by the Government, the institution shall be required to establish and maintain a program for the utilization, maintenance, repair, protection, preservation, and reporting of Government property in accordance with sound business practice and the provisions of FAR Subpart 45.5 and 945.5 of this chapter.

917.7108-4 Reports.

Excess property acquired from other Government agencies or from GSA and provided to institutions under the authority of 917.7108-2, above, will be included in the report required by FPMR 41 CFR 101-43.4701(c).

917.7109 Reporting requirements.

917.7109-1 Purpose of reports.

Research reports from contractors are necessary to show the progress achieved under projects receiving DOE funding. In many instances, the research reports are of value in making information available to scientists working on closely allied problems.

917.7109-2 Notice of Energy R&D Project.

Immediately after a special research contract is negotiated, a Notice of Energy R&D Project, DOE Form 538, which summarizes the purpose and scope of the project should be prepared by the contractor and sent to the contracting officer, the program manager, and the technical information officer. Annual updates are required.

917.7109-3 Progress reports.

Progress reports are required which should briefly describe the scope of investigations undertaken and the significant results obtained. They should also explain any significant differences between the actual level of activity (expressed in the various categories of labor-months, facilities acquired, travel performed, etc.) and that contemplated in the contract.

917.7109-4 Technical reports.

Technical reports, reprints, and articles prepared for publication during the period covered by the contract shall be required to be listed with bibliographic references. Reprints of all such material not previously submitted to the DOE shall be required to be appended and material contained in them need not be duplicated in the report.

917.7109-5 Special reports.

Special reports or additional progress, status, or topical reports shall be requested as required by program officials or submitted as deemed necessary by the contractor. For example, brief status reports shall be requested when developments are of immediate interest or when a significant point in the investigation has been reached. The value relative to the costs incurred in providing special reports must be considered when requesting any additional reports.

917.7109-6 Final report.

A final report summarizing the entire investigation shall be required from the contractor upon expiration of each contract. Satisfactory completion of a contract will be contingent upon the receipt of this report. The final report should follow the outline agreed upon for progress reports, or when a project has extended over a long period of time, the final report may refer to previously submitted technical reports for details and may be a synopsis of the entire project. Manuscripts prepared for publication should be appended.

917.7109-7 Summary and distribution of reports.

(a) A table summarizing the various types of reports, time for submission, number of copies and distribution is set forth below. The distribution and schedule of reports shall be as prescribed in this table, unless the authorizing program office specifies otherwise. Frequently, an annual progress report and a 200-word summary are sufficient for fundamental research, but additional reporting may be required in many cases. All reports shall be prepared by the contractor and submitted to the appropriate field office for distribution. The field office shall transmit these reports with a cover memorandum indicating: (1) The other DOE offices receiving the documents; (2) the name of the contractor; and (3) the contract number. Each copy of the documents shall bear the contract number.

DISTRIBUTION AND SCHEDULE OF DOCUMENTS

Type	When due	Number of copies for			
		Field office	HQ program office	TIC Oak Ridge	HQ patents OGC
1. Summary: 200 words on scope and purpose (S.I.E. Form).	At start of initial contract and period	1	3	1	
2. Renewal proposal	Not later than 4 months nor earlier than 6 months before contract expires.	2	4		
3. Annual progress reports	With renewal proposal, but bound separately.	2	4	2	
4. Other progress reports, brief topical reports, etc. (Desired when significant results developed or when work has direct programmatic impact).	As deemed necessary by investigator or as specifically requested by appropriate Hq. office.	2	4	2	
5. Conference papers	Same as 4 above	2	4	2	
6. Final report	Three months after completion of the work.	2	2	2	2

(b) The DOE contracting officer shall inform the contractor which types of documents are to be transmitted to TIC. For each document so identified, the contractor shall send an additional copy to the contracting officer for transmittal to TIC, accompanied by one copy of DOE Form 427.

(c) The research effort shall be prefaced by an informative abstract of no more than 200 words.

(d) A listing of technical reports, articles, and reprints and the appendage of reports not previously submitted are required.

917.7110 Dissemination of results.

917.7110-1 Prompt dissemination.

Prompt dissemination of research results to the scientific community is encouraged. Publication in open literature is recognized as the normal and most desirable means for reporting the findings of unclassified fundamental research. Although DOE reserves the right to utilize, and have others utilize, to the extent it deems appropriate, the reports resulting from research contracts, DOE will attempt, to the maximum extent practicable and consistent with the Government's best interest, to permit the institutions and the authors to effect their own publication in established technical journals.

917.7110-2 Publication.

(a) Contractors should be urged to publish results through normal publication channels. As a further inducement, page charges or other printing assessments for publishing articles in recognized scientific journals, or any additional costs incurred in obtaining a limited supply of reprints of articles, shall be considered an appropriate budget item under contracts receiving DOE support where:

(1) The document reports work funded by the Government;

(2) The charges are levied impartially on all research papers published by the journal, whether by non-Government or by Government authors;

(3) Payment of such charges is in no sense a condition for acceptance of manuscripts by the journal;

(4) The journals involved are not operated for profit; and

(5) The author does not receive an emolument for the research paper.

(b) A credit line shall be included in any such publication to indicate that the research has been funded, in whole or in part, by DOE. A patent check shall be made in advance of release to the public of any material prepared for publication.

(c) The contractor or principal investigator may publish contract data as approved by DOE in accordance with the provisions of the Patent Rights clause.

917.7111 Extension of contracts.

917.7111-1 Renewal proposals.

(a) Where additional time, beyond the current expiration date, is required to continue or complete the work under a special research contract, the contractor shall be requested to submit six copies of its renewal proposal to the contracting officer not later than four months nor earlier than six months before the date of expiration of the contract. If a renewal proposal has not been received four months prior to the contract expiration date, the contracting officer shall determine if a renewal proposal is to be submitted and take necessary action for contract close-out or processing the renewal proposal as appropriate.

(b) The renewal proposal shall outline and justify a program and budget for the succeeding year, showing in detail the estimated cost of the project, together with an indication of the items for which the contractor is requesting reimbursement or proportionate cost-sharing, the percentage of any such costs to be shared by the contractor, and any items to be contributed solely by the contractor. It should include the same type of information as that required for initial proposals, or reference this information to the extent contained in earlier proposals. Any contemplated change in program or scope for the ensuing period should be justified and explained clearly, and the cost estimates and other items should be based upon past experience. Any deviation from the contract which has not received DOE approval should be explained in detail.

(c) The renewal proposal should include a financial statement of the work under the current contract including:

(1) Total project costs for the current period to date, indicating the amount chargeable to DOE;

(2) An estimate of the total costs to be incurred during the remainder of the current contract period, indicating the amount chargeable to DOE;

(3) The anticipated difference, if any, between the accumulated support cost at the end of the current contract period and the cumulative Government ceiling; and

(4) A footnote to show the estimated amount of outstanding commitments for property at the end of the current contract period.

917.7111-2 Evaluation of requests for renewals.

(a) Requests for renewals are required to be evaluated by the appropriate program office in the light of:

(1) Progress reports submitted by the contractor;

(2) Research results published in scientific media;

(3) Field visits to the research site by technical personnel;

(4) Contractor's performance and progress;

(5) Continued relevance to DOE's mission;

(6) Scientific and technical merit of the research and a comparison of the relative importance of the project in relation to other research proposals, proposed and ongoing; and

(7) Availability of funds.

(b) Requests for renewals generally follow the same process of review and evaluation of technical aspects, funding, and preparation, and execution of the contract, and administration as a new project, although less use would normally be made of outside consultants.

(c) Contracts authorized by program offices shall not be extended for a new term or on an interim basis or modified in scope without specific prior authorization from the appropriate program office except as provided at 917.7111-3(c).

917.7111-3 Authorization to renew.

(a) When a determination has been made to extend a special research contract, the sponsoring program office is required to provide the contracting officer with notification 60 days in advance of expiration to permit an orderly completion of the extension before the expiration date. The authorizing directive generally should include the same type of information provided in the authorization of a new contract, including pertinent information concerning any changes in scope of work, level of funding, scheduled dates for completion of certain phases of work, target dates for submission of report, etc. The directive will describe the results of the prior funding period and what is expected to be accomplished in the new funding period.

(b) An authorization to renew a special research contract shall state the estimated total cost of items to be included under Article A-II(a) of Appendix A for the renewal period, the percentage of such costs to be reimbursed by DOE, and the amount of new funds authorized to increase the Government ceiling.

(c) The field office that has administrative jurisdiction of an existing contract may extend the term of an existing contract without authorization from the cognizant program office, provided that:

(1) Any such extension does not provide for an increase in DOE's monetary obligation under the contract;

(2) The scope of work is not revised by such extension;

(3) Such extension is necessary to permit completion of the scope of work authorized by Headquarters, including preparation of required reports; and

(4) Any such extension will not be for a period in excess of 90 days.

917.7112 Administration.

917.7112-1 Responsibilities of program offices.

(a) Technical representatives of program offices will make, to the extent practicable, periodic site visits. A written summary of the results of all visits will be prepared and filed promptly. Copies of such reports shall be forwarded to the contracting officer whenever they contain information of administrative interest or other information pertinent to the assigned responsibilities of the Contracting Activity. These visits are for the purpose of:

(1) Determining that the research is being performed in accordance with the contract;

(2) Ascertaining that schedules are being met to ensure timely submission of interim and final reports;

(3) Determining whether the project has adequate facilities, equipment, and scientific, technical, and other personnel for the specified research;

(4) Ascertaining that any equipment requested for purchase is not reasonably available within the institution;

(5) Assisting the principal investigator to clarify specific technical aspects as work progresses;

(6) Exploring future budget requirements, but without making any commitments as to future funding level; and

(7) Obtaining information regarding the status of work for administrative and technical purposes of the program sponsor.

(b) Program offices will provide guidance to the contracting offices in connection with:

(1) Any contractor requests for approval of proposed deviations or other actions requiring DOE approval which are brought to their attention by Contracting Activity, or which have been brought to their attention through site visits, progress reports, or other agreements or contacts with the contractor;

(2) Increasing the obligational authority under any special research contracts;

(3) Whether or not required contractor reports are satisfactory; and

(4) The renewal or close-out of contracts. Instructions should be provided at least four weeks prior to the expiration date of a contract.

917.7112-2 Responsibilities of field offices.

Field offices are responsible for the following:

(a) Assisting Headquarters program offices, as requested, in carrying out the functions set forth in 917.7112-1;

(b) Performing the necessary administrative functions required by the terms of the contract, and making payments in accordance with the contract;

(c) Bringing to the attention of the appropriate Headquarters offices:

(1) Any contractor requests for approval which are required by the contract;

(2) The upcoming expiration date of a contract whenever required instructions on renewal or close-out have not been received on a timely basis;

(3) Any request by a contractor to revise an established stipulated salary support amount, and any notification by a contractor that is reducing the charges under the stipulated salary support procedure (see 917.7106-4(c)); and

(d) Determining whether to use Pub. L. 95-224 or the Atomic Energy Act of 1954, as amended, as the authority for vesting title to personal property in the contractor when authorized to do so pursuant at 917.7106-7(c)(6). Pub. L. 95-224 shall be used to the maximum extent consistent with the authority contained therein.

917.7112-3 Payments under special research contracts.

(a) Payments will be made to contractors under a special research contract in accordance with its provisions (see Article B-XI of 917.7113). The letter-of-credit procedures, as provided for in Treasury Fiscal Requirements Manual, Part 6, Chapter 2000, shall be used to the maximum extent feasible when the total of DOE contracts and agreements with advance financing to an institution provides for a continuing annual level of support of $120,000 or more. When the total DOE contracts and agreements with advance financing provide for a continuing annual level of support of less than $120,000, DOE shall make advance payments covering the first 90 percent of the amount of the new funds as set forth in Article A-III(b) of the contract. The contracting officer may revise Article B-XI of 917.7113, regarding the timing and amounts of advance payments, in accordance with the following provisions.

(1) The advance payments may be made at times and in amounts determined appropriate provided that no single payment will exceed 45 percent of the new funds as set forth in Article A-III(b) of the contract for the pertinent period except on the basis of a request from the contractor evidencing that a specified amount is required in connection with expenditures or commitments made under the contract.

(2) The timing and amounts of payments should be determined on the basis of limiting the amount of advances to the extent feasible, consistent with effective and efficient administration and performance of the research, for the purpose of slowing the rate of cash withdrawals from the Treasury and thereby decreasing the financing costs to the Federal Government.

(3) In determining the timing and amounts of payments, consideration should be given to funds already available to the contractor, the expected expenditures under the contract, any information from the contractor regarding the need for funds, and the administrative cost of additional payments.

(b) If the contract is to be extended for an additional period of performance with additional funding, there may be paid at the time of execution of the extension, the amount withheld from the expiring period which, when added to the payments already made, does not exceed the new funds set forth in Article A-III(b) for the expiring period. The final payment under both of the procedures referred to in paragraph (a) of this section shall be made on the basis of determinations by the contracting officer that: (1) The required reports are satisfactory; (2) the research was performed in accordance with the provisions of the contract; (3) an additional payment is required to reimburse for all costs chargeable to DOE; and (4) an appropriate patent clearance has been obtained. If necessary in making these determinations, the contracting officer should obtain advice from technical personnel. It is expected that the annual progress and final reports and the contractor's certified cost statements will provide an adequate basis for making the required determinations. If the determinations cannot be made on the basis of the reports, visits to and other contacts with the research project during the contract period, and the contractor's certified statements, and the contracting officer determines that the contractor has not satisfied the contractual undertakings, appropriate steps shall be taken to protect the Government's interest.

917.7112-4 Approval of deviations in performance and other specified actions.

(a) Contractors should be advised to inform the contracting officer as soon as possible of contemplated deviations and other proposed actions which require DOE approval. Specific deviations and approval actions include the following:

(1) A change of the principal investigator, co-investigator, or other key people as might be named in the contract, or continuation of the research work for any period in excess of three months without direction by an approved principal investigator. The principal investigator may increase or decrease the amount of effort which he devotes to the project without obtaining the contracting officer's approval; however, a representative of the institution shall consult with the appropriate Headquarters program representative if the principal investigator plans to, or becomes aware that he will, devote substantially less effort to the work than anticipated in Article A-I. The purpose of such consultation will be to determine what effect, if any, the anticipated change will have on the research work and what modification to the contract, if any, may be appropriate.

(2) A change in the phenomenon or phenomena under study (i.e., broad category of the research under the contract) requires the specific written approval of the contracting officer; ordinarily such changes, if approved by the contracting officer, will be accomplished through a new contract or modification. The contractor may change the specific objectives in the research work described in the contract, provided it gives the contracting officer prompt notification of such changes; and the contractor may continue to follow the new objectives while DOE determines whether it wishes to continue the program under the changed approach. Significant changes in methods or procedures employed in performing the research should be reported in the first technical progress report issued subsequent to the changes.

(3) Acquisition of an item of equipment not itemized in the contract, the cost of which is $1,000 of more. Approval is not required if the equipment is merely a different model of an item listed in the contract. If plant and capital equipment funds are provided for the acquisition of equipment, with title to be vested in the Government, the total cost of such equipment shall not exceed the amount provided for such equipment unless prior approval has been obtained.

(4) Purchase of any general-purpose equipment, such as office equipment or furniture, air conditioning, etc., not specifically provided for in 917.7113, Appendix A of the contract will require prior approval.

(5) Incurring costs for items set forth in Article A-II(a), during the pertinent contract period stated in 917.7113, in Appendix A, in excess of 110 percent of the total estimated cost specified in Article A-III. Charges to DOE for any such costs incurred with approval of the contracting officer shall also be subject to the limitations of Article III.

(6) Any proposed foreign travel (defined as any travel outside of Canada and the United States and its territories and possessions) if requires prior approval.

(7) Expenditures for domestic travel if such expenditures exceed the amount shown in Article-II(a) for such travel by $500 or by 25 percent, whichever is greater, requires prior approval.

(8) Acquisition of excess personal property.

(9) Such other items as, in the judgment of the program office or the contracting officer, in specific cases need to be separately identified in the contract. (When plant and capital equipment funds are provided for the acqui-

dition of Government property, the program offices shall require that such funds be used only for acquiring the equipment designated in the contract, unless prior approval has been obtained.)

(b) The contracting officer will present (in any manner considered appropriate) all such requests for approval to the cognizant program office for consideration, and will issue such authorizations and modifications under the contract as are necessary and appropriate.

(c) Contractors should be required to provide such statements of the project's financial and program status as are believed necessary for considering requests for approval.

917.7112-5 Auditing.

(a) As a part of the management of the research program accomplished through special research contracts, auditing of participating institutions shall be initiated by the contracting officers administering the contracts. The prupose of this audit program is to corroborate that the participating institutions are properly using the funds and personal property provided by the contracts, and to identify any changes needed in the arrangement or in related administrative requirements in order to further the effectiveness of the contracts in accomplishing their intended programmatic research purposes. In addition to these general objectives, the principal specific objectives of the audits of special research contracts should determine that:

(1) The amounts as submitted in the contractor's certified cost statement are accurate and were incurred in connection with the work;

(2) Satisfactory documentary evidence is available in support of the costs incurred;

(3) DOE approval was obtained where required; and

(4) The proportion of total cost charged to DOE is in accordance with the percentage stipulated in the contract.

(b) The review of special research contracts should be made on a selective basis with the selected sample including all special research contracts where the contracting officer requested that an audit be performed pursuant to the provisions of 917.7112-3(b).

(c) In the event of termination prior to the expiration date of a special research contract, unless the costs incurred by the contractor are relatively small or can be otherwise adequately corroborated, an audit should be made to determine the nature of the costs and other relevant data for use in arriving at a termination settlement.

(d) While audit is not a prerequisite to payment under a contract, the contracting officer, before authorizing final payment, should consider the necessity for an audit to determine whether the charges to the contract are proper. If any such audits result in findings which may be of value to program offices in their determinations regarding selection and renewal of research projects, such findings should be made available to them.

917.7112-6 Security.

As a general rule, investigators should not need access to classified information in the conduct of basic research funded by DOE. The contractor should be advised when, in the judgment of the principal investigator, information is developed which should be classified, the DOE field office must be notified immediately. When, in the opinion of the cognizant program office, the work moves into a classified area, prompt steps shall be taken to notify the contractor and appropriate field office.

917.7113 Format for Special Research Contracts (SRC) with educational institutions/or other nonprofit institutions.

Contract No.————————

This contract is effective as of the ——, 19—, between the United States of America (hereinafter referred to as the "Government"), acting throught the U.S. Department of Energy (hereinafter referred to as the "DOE"), and ——— (hereinafter referred to as the "Contractor").

Recitals

DOE wishes to have the Contractor perform certain research. This contract states the terms and conditions under which the Contractor agrees to perform the work.

This contract is authorized by the Department of Energy Organization Act of 1977 and other applicable law.

AGREEMENT

Now therefore, the parties hereto agree as follows:

Article I—The Research To Be Performed

(a) The Contractor shall furnish personnel, facilities, equipment, materials, supplies, and services, except such as are furnished by the Government, necessary for the performance of the research provided for in Appendix A and shall perform the research and report thereon pursuant to the provisions of this contract. It is understood that Appendix A, a guide to the performance of this contract, may be deviated from by the Contractor subject to the specific requirements of this contract.

(b) This work shall be conducted under the direction of or such other members of the Contractor's staff as may be mutually satisfactory to the parties.

NOTE A.—The description of the research in Appendix A may be omitted and Appendix A appropriately modified to incorporated, by pertinent references to the proposal or other documents, the type of data necessary to describe the research as called for by Appendix A; and where there is no cost sharing, other features may be referenced in lieu of insertion in Appendix A. In such cases, the referenced material will be retained as part of the permanent contract file.

Article II—The Period for Performance

The period of performance under this contract shall commence on ——19—, and expire on ——19—. Performance may be extended for additional periods by the mutual written agreement of the parties. It is presently expected that this contract will be extended by mutual agreement until ——19—.*

*This sentence is optional and may be omitted.

Article III—Consideration

(a) In full consideration of the Contractor's performance hereunder, DOE shall furnish the equipment, supplies, materials, and services, if any, listed in Article A-11(b)(2) and pay the Contractor the sum of ——, hereinafter called the Government "Ceiling" which sum shall be subject to adjustments as hereinafter provided.

(b) Payments to the Contractor shall equal the "cumulative Government cost" of performance of this contract, as the term "cumulative Government cost" is defined in Article B-XXIX*; provided however, and notwithstanding any other provisions of this contract, that the Government's monetary liability under this contract shall not exceed the Government ceiling or an amount equal to the cumulative Government costs, whichever is less. The Contractor shall be obligated to perform under this contract throughout the agreed-upon period of performance, and to bear all costs which DOE has not agreed to pay; provided however, that the Contractor shall have the right to cease to perform the research provided for in this contract, upon written notice to DOE to that effect, at any time, when or after the cumulative Government cost equals or exceeds the Government ceiling.

(c) The Government ceiling specified in (a) above may be increased unilaterally by DOE by written notice to the Contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification to this contract). In the event that the stated period of performance is extended, the Government ceiling will be revised to reflect any increased DOE funding for the extended period or periods.

(d) Upon termination or expiration of the total period of performance, the Contractor shall promptly refund to DOE (or make such disposition as DOE may in writing direct) any sums paid by DOE to the Contractor under this contract, through direct payment or under letter or credit, in excess of the cumulative Government cost incurred in performance under the contract.

*The term cumulative Government costs refers to the cost of items under A-II(a) of Appendix A, for the initial contract period plus any extension period that may be properly chargeable to DOE. If proportionate cost sharing is involved, the cost is DOE's share of such costs, and does not include the cost of items excluded from Article A-II(a), such as items to be contributed solely by the Contractor or property to be furnished by the Government. Charges to DOE will be reported after the conclusion of each contract period set forth in Appendix A (generally an annual period); in addition to the limitations on charges to DOE provided for by this Article III, charges to DOE for a specified contract period may not exceed the 110 percent limitation mentioned above as well as to the provisions of this Article III.

Article IV—Government Property

The following items of property acquired or fabricated by the Contractor are hereby listed as "Government Property;" (List all property and equipment, title to which is to remain in the Government. Insert the word "none" if title to all of the property is to be vested in the Contractor. If title to property acquired of fabricated by the Contractor is to remain in the Government, add appropriate provisions for payment for such property from plant and equipment funds. Such funds should be in addition to, and not a part of, the "Government Ceiling" funds provided under Article III).

Article V—Appendices

Appendix A—Performance guide, Appendix B—General Provisions, and Appendix C—Statement of Costs, are hereby attached to and made a part of this contract.

In witness whereof, the parties have executed this contract.

United States of America

By ____________________
Date ____________________
Contracting Officer ____________________
Contractor ____________________
By ____________________
Date ____________________
Name ____________________
Title ____________________
Contract No. ____________________

APPENDIX A—PERFORMANCE GUIDE

Contractor ____________________
Contract No. ____________________
For the contract period —— through ——

Article A-I. Research to be performed by the Contractor. (Insert description of research activity and state the appropriate percentage of time or effort which the principal investigator(s) expects to devote to the work.)

Article A-II. Ways and means of performance. The listing under (a), (b), and (c) below should be in a form to permit determination of which items of costs are to be chargeable to DOE or proportionately shared, and which items are to be contributed solely by the Contractor or solely by DOE. The listing should also permit application of the approval requirements of the contract. Excessive detail in listing should be avoided.

(a) Items for which funding will be provided as indicated in A-III below. Do not include in this paragraph (a) any items which are to be contributed solely by the Contractor.

(1) Salaries and wages. State total dollar amount. If any stipulated salary amounts for professional staff members are established in accordance with FAR 31.3 or 31.7 the stipulated amounts, along with any limitations or requirements on the use of such stipulated amounts should be provided for in the contract.

(2) Equipment to be purchased or fabricated by the Contractor. List equipment to be purchased or fabricated by the Contractor and for which title is to remain in the Contractor and state the total dollar amount budgeted for such equipment. Such equipment may be set forth in general classifications as specifically as possible, if it is not feasible to list them individually. However, any individual piece of equipment, the estimated cost of which is over $1,000 will be separately identified. Except where the contract may otherwise specifically provide, equipment for the pupose of this paragraph A-II shall mean an item of personal property having a useful life expectancy in excess of 1 year and an acquisition cost in excess of $500. Failure to identify equipment may result in disallowance of its cost if subsequently pruchased.

(3) Travel. (Show amounts for both foreign and domestic. If none, state none).

Domestic ____________________
Foreign ____________________

(4) Other direct costs.

(5) Indirect costs based on applicable rates or predetermined rate of — percent if with a educational institution for FY year(s) ——. Show base or bases of costs to which rate apply.

(b) Items, if any, significant to the performance of this contract, but excluded from computation of Government costs and from consideration in proportioning costs. (See 917.7107-2(d)).

(1) Items to be contributed by the Contractor. In accordance with Article B-II(c), if a proposed Contractor contribution is included in this paragraph (b)(1), the Contractor shall maintain records adequate to permit DOE to determine the extent of the contribution. If the time or effort of the principal investigator(s) is to be contributed by the Contractor and excluded from A-II(a) and A-II(b), the contributed time or effort should be listed under A-II(d).

(2) Items to be contributed by the Government.

(c) Time or effort of principal investigator(s) contributed by Contractor but excluded from computation of Government cost and from consideration in proportioning costs. Where covered under A-II(a) or A-II(b) above, state: "None." See 917.7107-2(e).

Article A-III. The total estimated cost of items under A-II(a) above for the contract period stated in this Appendix A is $——. DOE will pay — percent of the actual costs of these items incurred during the contract period stated in this Appendix A, subject to the provisions of Article III and Article B-XXIX of Appendix B. The estimated Government cost for the contract period stated in this Appendix A is $——.

The estimated Government cost is funded as follows:

(a) Estimated unexpended balance from the prior period(s) $——.

(b) New funds for the current period $——.

The new funds being added in A-III(b) constitute the basis for advance payments provided under Article B-XI.

(c) Subject to their availability, additional funds anticipated for the contract in the amount of $——.

NOTE.—Do not include this provision in fully funded SRCs.

APPENDIX B—GENERAL PROVISIONS

Article B-I—Definitions

(a) The terms "DOE" means the U.S. Department of Energy or any duly authorized representative thereof, including the contracting officer except for the purpose of deciding an appeal under the article entitled "Disputes."

(b) The term "contracting officer" means an official designated to enter into or administer contracts and make related determinations and findings.

(c) Except as otherwise provided in this contract, the term "subcontracts" includes purchase orders under this contract.

*Article B-II—Inspection, Reports, Records, and Accounts**

(a) DOE shall have the right to inspect, in such manner and at all reasonable times as it deems appropriate, all activities of the Contractor arising in the course of its undertakings under this contract.

(b) The Contractor shall make progress and other reports in such manner and at such time as specified under this contract, as DOE may reasonably require from time to time.

(c) The Contractor agrees to keep records and books of account, in accordance with generally accepted accounting principles and practices, and consistent with the requirements of OMB Circular A-21, and FAR 31.3 or 31.7 as constituted on the effective commencement date of the contract period, covering its costs and expenditures for items included under Article A-II(a) of Appendix A and which are furtherance of the research work under this contract. In the event a contractor contribution is listed in Article A-II(b), the Contractor shall maintain records adequate to permit DOE to determine the extent of the contribution. If professional staff members are included under Article A-II(b), the Contractor shall maintain records on such personnel in accordance with the payroll distribution procedure of section J.6 of OMB Circular A-21.

(d) DOE shall at all reasonable times be afforded access to the premises and to these books and records and to related correspondence receipts, vouchers, memoranda, and other data of the Contractor; and the Contractor shall preserve such books and papers, without additional compensation therefor, in accordance with the retention requirements referenced in Article B-XVIII, Examination of Records.

*If the contract is with a nonprofit organization rather than an educational institution, this article should be revised to provide that the cost principles at FAR 31 as may be modified by 931 depending on the nature of the contractors organization, will be used in determining actual cost.

Article B-III—[Reserved]

Article B-IV—Disclosure of Information

This clause should be used in place of the clauses entitled "Security," 952.204-1, and "Classification" 952.204-2, in SRCs with educational institutions for off-site research that are not likely to produce Restricted Data or other classified information.

DISCLOSURE OF INFORMATION

(a) It is mutually expected that the activities under this contract will not involve Restricted Data or other classified information or material. It is understood, however, that if in the opinion of either party, this expectation changes prior to the expiration or termination of all activities under this contract, said party shall notify the other party accordingly in writing without delay. In any event, the Contractor shall classify, safeguard, and otherwise act with respect to all Restricted Data and other classified information and material, in accordance with applicable law and the requirements of DOE, and shall promptly inform DOE in writing if and when Restricted Data or other classified information and material becomes involved. If and when Restricted Data or other classified information or material becomes involved, the Contractor shall have the right to terminate performance of the work under this contract and in such event the provisions of this contract regarding termination for the convenience of the Government shall apply.

(b) The Contractor shall not permit any individual to have access to Restricted Data, or other classified information, except in accordance with the Atomic Energy Act of 1954, as amended, and DOE regulations or directives.

(c) The term "Restricted Data" as used in this article means all data concerning the design, manufacture or utilization of atomic weapons, the production of special nuclear material or the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act of 1954, as amended.

Article B-V—Responsibility for the Work

(a) The Contractor is solely responsible for the conduct of the work.

(b) In instances where the carrying out of the work involves a DOE license, the provisions of the pertinent license shall prevail over any inconsistent provisions of this contract.

Article B-VI—[Reserved]

Article B-VII—Rights in Technical Data (Short Form)

Insert the clause in 952.227-77.

Article B-VIII—Patent Rights—Small Business Firms or Nonprofit Organizations

Insert the clause in 952.227-71.

Article B-IX—Property Items

(a) Except as otherwise provided in this paragraph (a) and paragraph (b) of this Article B-IX, title to all material, supplies, and equipment purchased or otherwise acquired by the Contractor in the performance of its research activities shall be and remain in the Contractor. Said materials, supplies, and equipment shall be used for the benefit of research under this contract and any extensions or successor contractors hereto; and provided there is no interference with said research, shall be made available for use by investigators working on any Federal research contract at the same location. Subject to these priorities, materials, supplies, and equipment may be used as the Contractor wishes. Except as otherwise agreed in writing, title to any items of property listed as "Government property" shall pass directly to the Government; such property shall be subject to paragraphs (b), (c), (d), (e), and (f) of this Article B-IX.

(b) Subject to the mutual agreements of DOE and Contractor, the Government may furnish the Contractor items of equipment, materials, supplies or facilites for use by the Contractor in performance of the work. Title to these items shall remain in the Government unless otherwise agreed in writing. Such items of property and the items of property listed elsewhere in this contract as Government property, are hereinafter referred to as "Government property." Title to Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government or shall any such property, or any part thereof, be or become a fixture or lose its identity as property by reason of affixation to any realty.

(c) To the extent practicable, the Contractor shall cause all items of Government property to be suitably marked with an identifying mark or symbol indicating that the items are the property of the Government. The Contractor shall maintain, at all times and in a manner satisfactory to DOE, records showing the use and disposition of Government property. Such records shall be subject to DOE inspection at all reasonable times and DOE shall at all reasonable time have access to the premises wherein any items of Government property are located. Unless otherwise authorized in writing by DOE, the Contractor shall use Government property only for the purposes of this contract, provided, however, that the Contractor is hereby authorized to use items of equipment constituting Government property for other Federal research contracts to the extent such use: (1) Does not interfere with its work under this contract; (2) is not prohibited by provisions of the other Federal agreements; and (3) is promptly reported by the Contractor to contracting officer.

(d) The Contractor shall promptly notify DOE of any loss or destruction of or damage to Government property. It is understood that the Contractor shall not be liable for any such loss, destruction, or damage, unless same results from willful misconduct or lack of good faith on the part of any corporate officer of the Contractor, or of one or more of the contract's representatives having supervision or direction of all or substantially all of the activities under this contract. If the Contractor is liable for such loss, destruction, or damage, it shall promptly account therefor to the satisfaction of DOE; if the Contractor is not liable therefor, and is indemnified, reimbursed, or otherwise compensation for such loss, destruction, or damage, it shall promptly account therefor to the satisfaction of DOE.

(e) With the written approval of DOE, the Contractor may sell, transfer, or otherwise dispose of items of Government property to such parties and upon such terms as so approved, or itself acquire title to items of Government property upon such terms as may mutually be agreed upon in writing by the Contractor and DOE. The proceeds of any such disposition, and any agreed price of any such Contractor acquisition, shall be paid by the Contractor to the Government, or credited on account of DOE, payments to be made under this contract as DOE may direct. Subject to the other provisions of this contract, the Contractor shall deliver Government property to DOE upon request (suitably packed and shipped at the Government's expense).

(f) The Contractor shall utilize for the benefit of the work under this contract such items of property available to the Contractor by reason of its activities under other Federal research agreements as are appropriate for utilization under this Contract pursuant to the provisions of the pertinent Federal agreement.

Article B-X—Termination for Convenience of the Government

Insert the requirements of FAR 49.

Article B-XI—Payments

(a) DOE shall make payments to the Contractor with respect to the amount of consideration prescribed in Article III of this contract as follows:

(1) A maximum of an additional 45 percent of the new funds as set forth in Article A-III(b) of this contract following execution of this contract (and following the effectuation of each extended period) upon receipt of a request or requests in writing from the Contractor evidencing that the requested amount is currently needed in connection with planned expenditure or commitments for contract performance.

(2) A maximum of an additional 45 percent of the new funds as set forth in Article A-III(b) of this contract upon receipt of requests from the Contractor evidencing that the amount requested is then required in connection with the work under the contract.

NOTE.—Subparagraphs (1) and (2) of this paragraph (a) may be revised, as deemed appropriate by the contracting officer, in accordance with 917.71.

(3) If, following submission of an annual progress report, the contract is to be extended for an additional period of performance, and additional payment may be made at the time of execution of the extension which, when added to the payments already made under (1) and (2) above for the expiring period, will not exceed the new funds set forth in Article A-III(b) for the expiring period. A concluding payment for the pertinent period, if appropriate, may be made following submission of a certified statement showing Government cost and evidencing the Contractor's performance under this contract.

(4) If the contract is not to be extended, the final payment of the consideration provided for in Article III shall be made following submission by the Contractor of a final report required by Article B-XXI, in form and content satisfactory to DOE, and submission of a certified statement showing Government cost and evidencing the Contractor's performance and compliance with the patent provisions.

(b) The payments made pursuant to paragraph (a) above shall not prejudice or otherwise affect adversely any of the Government's rights under the contract. For purposes of settlement in the event of termination prusant to article B-X hereof, these payments shall not be construed as evidentiary, and any excess payment in the light of Article B-X shall be promptly returned to DOE.

(c) DOE, at its option, may invoke the following with respect to any amount of consideration remaining to be paid at any given time:

(1) DOE shall issue a letter of credit as provided for by Treasury Fiscal Requirements Manual, Part 6 Chapter 2000 under which payments to the Contractor with respect to the amount of consideration provided for in Article III will be made. The Contractor agrees that the first ninety (90) percent of the new funds as set forth in Article A-III(b) will be under the letter of credit and will be subject to the submission by the Contractor of a Payment Voucher on Letter of Credit (TUS 5401), in accordance with procedures based upon Treasury Fiscal Requirements Manual, Part 6 Chapter 2000 which are agreed to by the parties. Following submission by the Contractor of a final report provided for in Article B-XXI, in form and content satisfactory to DOE, and submission of a certified statement showing the total expenditures and evidencing the Contractor's performance, and upon submission by the Contractor to DOE of such invoices or vouchers as are satisfactory to DOE, DOE shall pay the Contractor the concluding payment of the consideration provided for in Article III: or said concluding payment will be included under the letter or credit and will be subject to submission by the Contractor of a payment voucher on letter of credit, in accordance with the procedures described above. If, following submission of an annual report, the contract is extended for an additional period of performance, an additional payment may similarly be made at the time of execution of the extension which, when added to the payments already made for the expiring period, will not exceed the new funds as set forth in Article A-III(b) for the expiring period. A concluding payment for the pertinent period, if appropriate, may be made following submission of a certified statement showing Government cost for the peritent period and evidencing the Contractor's performance.

(2) DOE reserves the right to increase, decrease, or cancel the amount covered by the letter of credit, provided that such action is required because of a change in the amount of consideration provided for in Article III or is taken pursuant to paragraph (c)(1) of this article. The issuance and use of a letter of credit and receipt of funds pursuant thereto shall not prejudice or otherwise adversely affect any of the Government's rights under the agreement.

Article B-XII—Equal Opportunity

Insert the clause from FAR 52.222-26.

Article B-XIII—Convict Labor

Insert the clause from FAR 52.222-3.

Article B-XIV—Contract Work Hours and Safety Standards Act—Overtime Compensation—General

Insert the clause from FAR 52.222-4 with appropriate insertions.

Article B-XV—Disputes

Insert the clause in FAR 52.223-1.

Article B-XVI—Officials Not To Benefit

Insert the clause in FAR 52.203-1.

Article B-XVII—Convenant Against Contingent Fees

Insert the clause in FAR 52.203-5.

Article B-XVIII—Examination of Records

Insert the clause from FAR 52.215-1. The Examination of Records clause in FAR 52.215.1 may be omitted from foreign contracts in accordance with procedures in FAR 25.9.

Article XIX—[Reserved]

Article B-XX—Assignment: Subcontracting

Neither this contract nor any interest therein nor claim thereunder shall be assigned or transferred by the Contractor, except as expressly authorized in writing by the contracting officer. The Contractor shall not subcontract any research or development work under this contract, except as expressly authorized in writing by the contracting officer.

Article B-XXI—Reports and Renewal Proposals

The Contractor shall furnish six (6) copies of the following reports to the appropriate field office.

(a) *Progress report.* The progress report shall briefly describe the scope of investigations undertaken and the significant results obtained. It shall also indicate compliance with the contract requirements and any failures to comply. The report shall indicate the approximate percentage of time or effect which the principal investigator(s) has devoted to the project since the beginning of the current term of the contract and indicate the amount of effort which is expected to be devoted during the remainder of the current term. Technical reports, preprints, and articles prepared for publication shall be listed with bibliographical references. Reprints of all such material not previously submitted shall be appended and material contained therein need not be duplicated in the report. Progress reports shall be submitted approximately 4 months in advance of the expiration of the current contract term and shall give the Contractor's best estimate of the probable events and occurences in regard to the remainder of the current term. Except as DOE may otherwise request, no further progress report will be required for any contract year unless there has been a significant change in scientific results or compliance between the lastest progress report by the contractor and its actual experience which shall be reported promptly.

(b) *Final report.* Upon termination or expiration of the total period of performance, the Contractor shall submit, promptly, a summary of its activities for the entire period, including a list of publications issued during the entire period and copies of any reprints not previously submitted, as well as a comprehensive evaluation of progress in the area of research funded by the contract.

(c) *Renewal proposals.* A renewal proposal, if any, shall be submitted along with the technical progress reports, and each of the two documents shall be separately bound. Renewal proposals are submitted to the DOE contracting officer.

Article B-XXII—Foreign travel

Foreign travel shall be subject to the prior approval of the contracting officer for each separate trip, regardless of whether funds for such travel are contained in an approved budget. Foreign travel is defined as any travel outside of Canada and the United States and its territories and possessions.

Article B-XXIII—[Reserved]

Article B-XXIV—Utilization of Labor Surplus Areas Concerns

Insert the clause in FAR 52.220-3 under the conditions prescribed therein.

Article B-XXV—Utilization of Small Business Concerns and Small Disadvantaged Business Concerns

Insert the clause in FAR 52.219-8.

Article B-XXVI—Utilization of Women-Owned Small Business

Insert the clause in FAR 52.219-13.

Article B-XXVII—Sensitive Foreign Nations Controls

Insert the clause at 952.204-71 if the contract involves research in nuclear technology and it is appropriate. The contracting officer should confirm its inclusion with the local security office.

Article B-XXVIII—Affirmative Action for Special Disabled and Viet Nam Era Veterans

Insert the clause in FAR 52.222-35.

Article B-XXIX—Determination of Government Costs

*(a) The term "Government cost" as used in this contract means DOE's share** of the sum of costs incurred by the Contractor for items included under Article A-11(a) of Appendix A furtherance of the work hereunder, incurred in accordance with the provisions of this contract, and which are reported to DOE in accordance with (b) below. The term "cumulative Government costs" as used in this contract means the total of the Government costs incurred during the initial contract period plus any extension periods.

(b) Within 3 months after the end of each contract period set forth in Appendix A, and within 3 months after the termination or expiration of the total period of performance, the Contractor shall furnish a certified statement, executed by an official of the Contractor showing the Contractor's cost and evidencing its performance under the contract, during the contract term just completed. The statement shall show all cost incurred during the pertinent contract term set forth in Appendix A for items under Article A-II(a) of Appendix A, including the Contractor's share, if any, of such costs, and show the extent of the Contractor's contribution of items under Article A-II(b)(1) of Appendix A. Costs included in the certified statement may include the following: expenditures of cash, the cost of material and supplies transferred from store's inventory, and the amount due the Contractor for indirect costs in accordance with the rate and factor shown in Appendix A of the contract for the pertinent period. The costs for the pertinent period shall be consistent with the principles of OMB Circular A-21 as constituted as of the effective commencement date of said period. The certified statement shall be in the form set forth in Appendix C.

(c) The certified statement should be in agreement with the institution's financial record and shall reflect only expenditures actually made during the period covered, including transfers from inventory. It shall not include commitments as a part of such expenditures for goods or services on order but not received or those received but not paid for, unless the Contractor is operating under an established and consistently applied system of accrual accounting. If this is the case, the certified statement shall be so footnoted. A combination of accrual and cash accounting for cost accumulation and reporting purposes shall not be used. The renewal proposal budget should be footnoted to show the estimated amount of outstanding commitments for property at the end of the current period. The certified statement contains a space in which office should be inserted the actual amount of outstanding commitments for property at the end of the period covered by the statement. This commitment amount is for information only and is not a part of the expenditure calculation. The Contractor understands that DOE expects to rely on this certified statement for determining the Government cost for the period. With respect to any period in which proportionate cost sharing is applicable, the support costs for the pertinent period will be determined by applying the percentage figure included in Article A-III for the pertinent period to the certified cost of items included under Article A-II(a) incurred during the pertinent period. All charges to DOE shall be subject to the approval requirements of this contract. The Contractor is expected to maintain auditable records as contemplated by Article B-II(c) to substantiate the costs incurred for items under Article A-II(a) and to show the extent of the Contractor's contribution of the items listed under Article A-II(b)(1).

*If the contract is with a nonprofit organization other than an educational institution or a research foundation established by an educational institution, this article should be revised to provide that the commercial cost principles (FAR 31.2) will be used in determining actual cost.

**In those cases in which there is no proportionate sharing of costs, DOE's "share" will be 100 percent. With respect to any period in which proportionate cost sharing is applicable to Article A-III, it is understood that Government cost for that specified period will equal the stipulated percent of the sum of costs incurred by the Contractor during the stated period for items under A-II(a) of Appendix A, not shown in Appendix A of the contract for the pertinent period. The costs for the pertinent period shall be consistent with the principles of OMB Circular A-21 and FAR 31.3 or FAR 31.7 as constituted on the effective commencement date of said period. The certified statement shall be in the form set forth in Appendix C.

Article B-XXX—Additional Approvals

In addition to such approvals as are specifically required by other provisions of this contract, the Contractor shall obtain DOE's approval for:

(a) A change of the principal investigator, co-investigator, or other key people as might be named in this contract or continuation of the research work for any one period in excess of 3 months without direction by an approved principal investigator. The principal investigator may increase or decrease the amount of effort which he devotes to the project without obtaining DOE approval; however, a representative of the institution shall consult with the appropriate DOE Headquarters program representative if the principal investigator plans to, or becomes aware that he will devote substantially less effort to the work than anticipated in Article A-1. The purpose of such consultation will be to determine what effect, if any, the anticipated change will have on the research work and what modification to the contract, if any, may be appropriate.

(b) No change in the phenomenon or phenomena under study, i.e., broad category of the research under the contract, shall be made without the specific written approval of the contracting officer. Ordinarily, such changes, if approved by the contracting officer, will be accomplished through a new contract or mutually agreed to modification. The Contractor may change the specific objectives in the research work described in the contract, provided it gives the contracting officer prompt notification of such changes, and the Contractor may continue to follow the new objectives while DOE determines whether it wishes to continue the program under the changed approach. Significant changes in methods or procedures employed in performing the research should be reported in the first technical program report issued subsequent to the changes.

(c) Prior approval is required. Acquisition of an item of equipment not itemized in Appendix A, the cost of which is $1,000 or more. Approval is not required if the equipment is merely a different model of an item listed in Appendix A. (If plant and capital equipment funds are provided for the acquisition of equipment with title to be vested in the Government, the total cost of such equipment shall not exceed the amount provided for such equipment unless prior DOE approval has been obtained.)

(d) Prior approval is required. Purchase any general-purpose equipment, such as office furniture, air conditioning, automatic data processing equipment, etc., not specifically provided for in Appendix A.

(e) Incurring costs for items set forth in Article A-II(a), during the pertinent contract period stated in Appendix A, in excess of 110 percent of the total estimated cost specified in Article A-III. Charges to DOE for any such costs incurred with the approval of DOE shall also be subject to the limitations of Article A-III.

(f) Any proposed foreign travel (see Article B-XXII).

(g) Prior approval is required. Expenditures for domestic travel if such expenditures exceed the amount shown in Article A-II(a) for such travel by $500 or by 25 percent, whichever is greater.

(h) Acquisition of excess personal property.

Article B-XXXI—[Reserved]

Article B-XXXII—Clean Air and Water

Insert the clause in FAR 52.223-2 under the conditions set forth therein.

Article B-XXXIII—Affirmative Action for Handicapped workers

Insert the clause set forth in FAR 52.222-36 under the conditions set forth in the section.

Article B-XXXIV—Security

Insert the clause in 952.204-1 under the conditions set forth therein.

Article B-XXXV—Classification

Insert the clause in 952.204-70 under the conditions set forth therein.

Article B-XXXVI—Preference for U.S. Flag Air Carriers

Insert the clause in FAR 52.247-63 under the conditions set forth in FAR 47.4.

Article B-XXXVII—Preservation of Individual Occupational Radiation Exposure Records

Insert the clause set forth in 952.223-75 where appropriate.

APPENDIX C—STATEMENT OF COST

1. Name and address of Contractor ....
2. Contract number ....
3. Beginning and ending date of pertinent contract period ....
4. Costs incurred during the pertinent contract period (List only those costs which are to be reimbursed by DOE or proportionately shared by the parties in accordance with Article A-II(a) and Article A-III.)

Cost categories*	Amount
a. Salaries and wages	$______
b. Equipment	$______
(List separately the cost of each piece the equipment separately listed in Appendix A to the agreement or for which separate approval was obtained from DOE.)	
c. Travel	$______
(Show amounts for both foreign and domestic. If none, state none.)	
Foreign	$______
Domestic	$______
d. Other direct costs	$______
e. Total direct expenditures	$______
f. Indirect charges	$______
(Indicate percent and expenditures to which percent is applied.)	

5. Total costs for items under Article A-II(a) for pertinent period .... $______
6. Government costs for the pertinent period set forth in Appendix A, as defined in Article B-XXIX, chargeable to DOE for the pertinent period (percent of total costs using percent shown in Article A-III of Appendix A) for pertinent period of .... $______
7. Cumulative Government cost (Government cost under this statement plus Government costs for previous periods .... $______

APPENDIX C—STATEMENT OF COST—Continued

8. Accumulated Government ceiling in Article III ...... $______

9. The difference between lines 7 and 8 .... $______

10. Provide information regarding contributions by the Contractor of items in Article A-II(b) of Appendix A during pertinent period. State the extent of the Contractor's actual contribution, the measure of such contributions should be in the same terms as the Contractor's commitment under Article A-II(b), e.g., time, dollar, etc ... $______

11. Actual outstanding commitments for property at the end of the period covered by this statement .... $______

I hereby certify that this report is true and correct to the best of my knowledge and belief and that the costs listed herein were incurred in connection with the performance of the research provided for under this contract and in accordance with the terms and conditions set forth therein

....

(Name and Title of an Authorized Representative)

....

(Signature) (Date)

*The listing of categories should be consistent with the itemization in Appendix A.

[49 FR 11974, Mar. 28, 1984; 49 FR 38950, Oct. 2, 1984]

Subpart 917.72—Program Opportunity Notices for Commercial Demonstrations

917.7200 Scope of subpart.

(a) This subpart establishes procedures for the submission, evaluation, and selection for award or support of proposals offered in response to program opportunity notices (PONs) issued by DOE to accelerate the demonstration of the technical feasibility and commercial application of all potentially beneficial non-nuclear energy sources and utilization technologies.

(b) As a result of a PON, a contract, grant or cooperative agreement may be entered into. If the intended relationship is expected to be a contract this regulation shall be followed. If the intended relationship is expected to be a financial assistance instrument the DOE Assistance Regulations (DOE-AR) shall be followed. Specifically, DOE-AR 600.233 (10 CFR Part 600.233) will apply if the intended relationship is expected to be a cooperative agreement. In any event, any public notice, solicitation, or request for applications or proposals should indicate whether the intended relationship will be one of acquisition or assistance and state that acquisition regulation will govern if an acquisition contract is entered into and that the assistance regulation will govern if a financial assistance instrument is utilized.

(c) This subpart applies to demonstrations performed by individuals, educational institutions, other commercial or industrial organizations, or other private entities, or by public entities, including State and local governments, but not other Federal agencies. For purposes of this subpart, commercial demonstration projects include demonstrating technological advances and field demonstrations of new methods and procedures, and demonstration of prototype commercial applications for the exploration, development, production, transportation, conversion, and utilization of non-nuclear energy resources.

917.7201 Policy.

917.7201-1 General.

(a) It is DOE's intent to encourage the submission of proposals to accelerate the demonstration of the technical, operational, economic, and commercial feasibility and environmental acceptability of particular energy technologies, systems, subsystems, and components. Program opportunity notices will be used to provide information concerning scientific and technological areas encompassed by DOE's programs. DOE shall, from time to time, issue program opportunity notices for proposals for demonstrations of various forms of non-nuclear energy and technology utilization.

(b) Synopsis of the notice shall be published in the Commerce Business Daily prior to release. In addition, the notice shall be circulated directly to potentially interested individuals, private and public entities (excluding Federal agencies) and associations thereof to the maximum extent feasible. Special attention in this regard should be given to small business concerns, small disadvantaged concerns, and women-owned small business concerns to insure that they are given every opportunity to participate in such acquisitions. Consideration should be given to distributing the notice to all eligible entities which, during the preceding two years, have expressed an interest in participating in, or entering into arrangements for, commercial demonstration in the particular energy field.

917.7201-2 Determination to use and approval of content.

(a) *Determination to use.* (1) Before the PON is selected as the appropriate solicitation procedure the Head of the Contracting Activity expected to issue the notice will be consulted to assure that the PON is the appropriate solicitation method. A written program determination shall be made to show that the conditions in 917.7201-3 exist to support the conclusion that the use of the PON procedure is both necessary and appropriate. The determination must not be merely conclusive but shall be supported by specific facts and explanations.

(2) The Senior Program Official or designee may approve the determination.

(3) The approved determination shall be included in the PON file.

(b) *Approval of content.* (1) When the dollar amounts are less than Source Evaluation Board (SEB) level, a PON may be originated at whatever level is consistent with the program objectives established by the Senior Program Official. When a source evaluation board is not required, notices may be approved by the Senior Program Official or designee after prior concurrence by Counsel.

(2) When an SEB is required, notices shall be reviewed and approved by the SEB after prior concurrence by Counsel, and the Senior Program Official or designee.

(3) All PONs shall be issued by the cognizant Head of the Contracting Activity or designee.

917.7201-3 Federal support criteria.

In determining the appropriateness of DOE involvement through the PON mechanism in any particular area of demonstration activity, consideration shall be given to the extent to which the proposed undertaking meets Federal support criteria including, but not limited to, the following:

(a) The urgency of public need for the potential results of the research, development, or demonstration effort is high, and it is unlikely that similar results would be achieved in a timely manner in the absence of Federal assistance;

(b) The potential opportunities for non-Federal interests to recapture the investment in the undertaking through the normal commercial utilization of proprietary knowledge appear inadequate to encourage timely results;

(c) The extent of the problems treated and the objectives, sought by the undertaking are national or widespread in their significance;

(d) The opportunities to induce non-Federal support of the undertaking through regulatory actions, end-use controls, tax and price incentives, public educations, or other alternatives to direct Federal financial assistance are limited;

(e) The degree of risk of loss of investment inherent in the research is high, and the availability of risk capital to the non-Federal entities which might otherwise engage in the field of the research is inadequate for the timely development of the technology;

(f) The research, development, and application objectives anticipated by the activities or facilities proposed, support national interests or objectives;

(g) The economic, environmental, and societal significance which a successful demonstration may have for the national fuels and energy system; and

(h) The availability of non-Federal participants to construct and operate the facilities or perform the activities associated with the proposal and to contribute to the financing of the proposal.

917.7201-4 Information to be included in program opportunity notices.

Each program opportunity notice shall include:

(a) The goal of the intended demonstration effort;

(b) A time schedule for submission of, and action on, proposals:

(c) Evaluation criteria, including an indication, when determined practicable to do so, of the approximate cost and time duration contemplated for individual projects resulting from the notice;

(d) Program policy factors.

(e) A statement that additional information, consistent with the overall concepts and approaches developed in the proposal, may be required regarding the statement of work and the proposed budget (e.g., a notice that a detailed cost breakdown may be required from the proposers being considered);

(f) Such other information, terms, or conditions that shall apply to the particular program opportunity notices;

(g) A place and manner of submission; and

(h) A late proposal provision (see FAR 15.412).

917.7201-5 Information to be provided in proposals offered pursuant to program opportunity notices.

(a) Name and address of the entity(ies) submitting the proposals;

(b) Date of preparation of submission;

(c) Type of entity(ies) (public, including State and local governments, and private, including profit and nonprofit organizations and educational institutions);

(d) Representations and certifications as specified in the notice; and

(e) Concise title and abstract of the proposed demonstration project for which assistance or participation is being sought.

(f) An outline and discussion of the proposed demonstration which shall, if applicable and to the extent possible, specifically address and reference the evaluation criteria and include:

(1) Specification of the technology;

(2) Proposed statement of work to be performed;

(3) Description of prior operation experience with the technology;

(4) Preliminary design of the demonstration plan;

(5) Time tables containing proposed construction or fabrication and installation and operation plans;

(6) Budget-type estimates of construction or fabrication and operation costs;

(7) Description and proof of title to land for proposed site, natural resources, electricity and water supply, and logistical information related to access to raw materials to construct and operate the plant and dispose of salable products from the plant;

(8) Assessment of the environmental impact of the proposed plant and plans for disposal of wastes resulting from the operation of the plant;

(9) Plans for continued use of the technology if the demonstration is successful;

(10) Plans for continued use of the plant if the demonstration is successful;

(11) Plans for dismantling of the plant if the demonstration is unsuccessful or otherwise abandoned;

(12) Form and amount of assistance or participation being sought;

(13) Form and amount of funding, or other contribution to be provided by the proposer, including proposed disposition of revenues generated; and,

(14) The extent to which the proposed expenditures would constitute permanent (nonseverable) improvement to property now owned by the Government; and proposed plans for the disposal (through acquisition by the offeror or otherwise) of any such improvements.

The information called for under this section relates primarily to a demonstration project involving the construction and operation of a "plant." In instances where the proposed project concerns a demonstration that does not involve a plant (for example, the demonstration of a process, apparatus, or device), the program opportunity notice shall state what additional information is to be submitted with the proposal;

(g) Names of key personnel to be involved, brief biographical information, including relevant experience;

(h) A current financial statement;

(i) The period for which proposal is valid;

(j) Names and telephone numbers of proposer's primary business and technical personnel whom DOE may content during evaluation or negotiation;

(k) Each proposal containing technical data or proprietary or busines confidential information, which the proposer intends to be used by DOE for evaluation purposes only, should be marked on the cover sheet with the legend prescribed in 927.402-3(d); and

(i) Signature and title of official of the proposing organization authorized to contractually obligate such organization.

917.7202-1 Forms of assistance and participation.

(a) In providing for demonstration, DOE may utilize various forms of Federal assistance and participation. These include but are not limited to:

(1) Contracts;

(2) Grants;

(3) Loans;

(4) Incentives, including financial awards, to individual inventors;

(5) Joint Federal-industry demonstration corporation;

(6) Federal purchase(s) or guaranteed price of the products of the demonstration project; and

(7) Cooperative agreements.

917.7202-2 Cost participation.

The provisions of DOE's cost participation policies contained in 917.70 shall apply, as applicable, to proposals hereunder.

917.7203 Method and criteria for evaluation and selection.

(a) *General policy.* (1) Information contained in proposals offered in response to PONs shall be handled in accordance with the policies and procedures set forth in 927.402-3(d) pertaining to the marking and handling of proprietary data.

(2) Late proposals, modifications of proposals, and withdrawals of proposals shall be handled in accordance with FAR 15.412.

(b) *Selection.* (1) When the aggregate of expected award values, plus costs shared by the performer and/or other parties, together with later phases of the same project, is expected to meet the SEB dollar threshold, comprehensive evaluation shall be conducted by a specially constituted board which shall follow procedures and documentation requirements of the SEB Handbook modified as appropriate to conform to the solicitation process as set forth herein.

(2) When the aggregate of expected award values, plus costs shared by the performer and/or other parties, together with the later phases of the same project is not expected to meet the SEB dollar threshold, proposals submitted in response to a PON will be evaluated by a panel which shall be appointed by the cognizant program office. The panel should utilize any of the procedures and documentation requirements of the SEB Handbook (as modified as appropriate to conform to the solicitation process as set forth herein) whenever necessary to ensure the impartial, equitable and thorough evaluation of each proposal. The panel will be composed of program office and other personnel, including representatives of Procurement, Counsel, and, as deemed appropriate by the appointing official, supplemented by Personnel from other Government agencies. The representative of Counsel will be an ex-officio (nonvoting) member of the panel. Personnel from DOE management or operating contractors may be used as advisors to the panel when their services are necessary and available as long as the approvals and procedures in 927.70 and 915.613(f) are followed.

(c) *Evaluation criteria.* The evaluation criteria shall be specified in the notice along with a narrative description of their relative importance. The criteria below, to the extent applicable, as well as any additional criteria stated in the program opportunity notice, shall be considered:

(1) The overall technical feasibility of the proposed effort;

(2) The contribution which the proposed effort is expected to make to DOE in carrying out its program responsibilities, including, but not limited to, solving energy extraction and storage, transportation, conversion, waste utilization, and conservation problems;

(3) The capabilities, related experience, facilities, instrumentation, or techniques which the proposer possesses and offers, and which are considered to be integral factors for achieving the objective(s) of the proposal;

(4) The qualifications, capabilities, experience, and availability of the proposed key personnel;

(5) The ability of the proposer to furnish necessary financial support;

(6) Project and financial plans for management of the activities including the adequacy of proposed arrangements among all participants;

(7) Plans for involvement of the small business community;

(8) Cost realism and probable cost to the government.

(d) *Program policy factors.* Program policy factors are those factors which, while not appropriate indicators of a proposal's individual merit (i.e., technical excellence, proposer's ability, cost, etc.), are relevant and essential to the process of choosing which of the proposals received will, taken together, best achieve the program objectives. All such factors shall be predetermined and specified in the notice so as to notify proposers that factors which are essentially beyond their control will affect the selection process. The following are examples of possible program policy factors:

(1) It is desirable, because of the nature of the energy source, the type of projects envisioned, or limitations of past efforts, to select for award or support a group of demonstration projects with a broad or specific geographic distribution;

(2) It is desirable to select for award or support (for reasons that must be stated) projects from diverse types and sizes of proposing organizations;

(3) It is desirable to select for award or support a group of projects which represents a diversity of methods, approaches, applications, or kinds of work; and

(4) It is desirable, due to the nature of certain projects or proposing organizations, to select for award or support duplicative or complementary efforts or projects.

(e) *Selection official.* The selection official will be as provided in 915.

(f) *Preliminary review.* (1) Prior to making a comprehensive evaluation of a proposal, the SEB, or the receiving office when an SEB is not required, shall determine that it:

(i) Contains sufficient technical, cost, and other required information to enable comprehensive evaluation; and

(ii) Has been signed by a responsible official of the proposing organization or a person authorized to obligate such organization.

(2) If the proposal does not meet these requirements, a comprehensive evaluation shall not be made. In such a case, a prompt reply shall be sent to the proposer, indicating the reason(s) for its not being selected for award or support under the PON.

(g) *Comprehensive evaluation.* The basic task in the evaluation and selection of proposals for award or support is to assess their relative merit in order to determine which of them offers the greatest likelihood for achievement of the program objectives stated in the notice, considering technical quality, ability of the proposer, estimated cost, and other relevant factors. Proposals which survive preliminary review shall be evaluated by an SEB or a panel, as applicable, in accordance with the criteria stated in the notice. The Source Selection Official will select proposals for support or award from the findings established by the SEB or panel, as applicable. In this latter process, the selection official will take into account the relevant program policy factors in order to determine the mix of proposed projects which will best further specific program goals. All findings and selections are to be documented, signed, and maintained to provide an adequate record of the proceedings.

[49 FR 11974, Mar. 28, 1984; 49 FR 38950, Oct. 2, 1984]

917.7204 Award or support.

While only those proposals which further the needs of the program as specified in the notice will be considered for award or support, DOE may accept for award or support all, none, or any number or part of the proposals submitted.

917.7205 Unsolicited proposals for commercial demonstrations.

See 915.503.

917.7206 Optional two-step method.

Where a large number of proposals are anticipated, proposals may be limited to technical considerations with cost proposals subsequently requested from those proposers whose technical proposals are evaluated as technically acceptable.

Subpart 917.73—Program Research and Development Announcements

917.7300 Scope of subpart.

(a) This subpart establishes procedures for the submission, evaluation, and selection for award or support of proposals offered in response to specific program research and development announcements (PRDAs) issued by DOE to conduct research, development, and related activities in the energy field.

(b) As a result of a PRDA, a contract, grant or cooperative agreement may be executed. If the intended relationship is expected to be a contract this regulation shall be followed. If the intended relationship is expected to be a financial assistance instrument the DOE Assistance Regulations (DOE-AR) shall be followed. Specifically, DOE-AR 600.234 (10 CFR 600.234) will apply if the intended relationship is expected to be a cooperative agreement. In any event, any public notice, solicitation, or request for applications or proposals should indicate whether the intended relationship will be one of acquisition or assistance and state that the DEAR will govern if a contract is entered into and that the DOE-AR will govern if a financial assistance instrument is utilized.

(c) This subpart applies to efforts by the DOE to conduct, or participate in joint or cooperative projects for research, development, and related activities with individuals, private entities (including educational institutions, nonprofit organizations, and commercial industrial organizations), or public entities (including State and local governments, but not Federal agencies), provided, however, that the conditions set forth in 917.7301-1(c) exist.

917.7301 Policy and prerequisites.

917.7301-1 General.

(a) PRDAs shall be used to provide potential proposers with information concerning DOE's interest in entering into arrangements for research, development, and related projects in specified areas of interest. It is DOE 's intent to solicit the submission of ideas which will serve as a basis for research, development, and related activities in the energy field. It is DOE's desire to encourage the involvement of small business concerns, small disadvantage business concerns, and women-owned small business concerns in research and development undertaken pursuant to PRDAs.

(b) The PRDA should not replace existing acquisition procedures where a requirement can be sufficiently defined for solicitation under standard advertised or negotiated acquisition procedures. Similarly, it should not inhibit or curtail the submission of unsolicited proposals. However, a proposal which is submitted as though it were unsolicited but is in fact germane to an existing PRDA shall be treated as though submitted in response to the announcement or returned without action to the proposer, at the proposer's option. Further, the PRDA is not to be used in a competitive situation where it is appropriate to negotiate a study contract to obtain analysis and recommendations to be incorporated in the subsequent request for proposals.

(c) The PRDA is to be used only where:

(1) Research and development is required in support of a specific project area within an energy program with the objective of advancing the general scientific and technological base, and this objective is best achieved through:

(i) A diversity of possible approaches, within the current state of the art, available for solving the problems;

(ii) The involvement of a broad spectrum of organizations in seeking out solutions to the problems posed;

(iii) The application of the unique qualifications or specialized capabilities of many individual proposers which will enable them to perform portions of the research project (without necessarily possessing the qualifications to perform the entire project) so that the overall support may be broken into segments which cannot be ascertained in advance; and,

(iv) The fostering of new and creative solutions.

(2) Consistent with (c)(1) of this section, it is anticipated that choices will have to be made among dissimilar concepts, ideas, or approaches; and

(3) It is determined that a broad range of organizations exist that would be capable of contributing towards the overall research and development goals identified in (c)(1) of this section.

(d) The PRDA shall be synopsized in the Commerce Business Daily prior to release. The announcement shall also be circulated directly to interested individuals, private and public entities (excluding Federal agencies), and associations thereof to the maximum extent feasible.

[49 FR 11974, Mar. 28, 1984, as amended at 55 FR 33314, Aug. 15, 1990]

917.7301-2 Determination to use and approval of content.

(a) *Determination of use.* (1) Before the PRDA is selected as the appropriate solicitation procedure, the Head of the Contracting Activity expected to issue the announcement shall consult with requiring program office to assure that the PRDA is the appropriate solicitation method. A written program determination shall be made to show that the conditions in 917.7301-1(c) exist to support the conclusion that use of the PRDA procedure is both necessary and appropriate. The determination must not be merely conclusory but shall be supported by specific facts and explanations.

(2) [Reserved]

(3) The approved determination shall be included in the PRDA file.

(b) *Approval and content.* (1) A PRDA may be originated at whatever level is consistent with the program objectives established by the Senior Program Official.

(2) The PRDA content must be approved by the Senior Program Official or designee after prior concurrence by Counsel, and the Procurement Director of the office assigned to issue the PRDA.

(3) All PRDAs will be issued by the Head of the Contracting Activity or designee.

917.7301-3 Information to be included.

Each PRDA shall include:

(a) A summary of the area(s) of program interest, expanded as appropriate, to include problems and objectives;

(b) A time schedule for submission of, and action on, proposals;

(c) Information to be provided in the proposals;

(d) Evaluation criteria;

(e) Program policy factors;

(f) Other information, terms and conditions which shall apply to the particular PRDA;

(g) Place for, and manner of, submission;

(h) A unique number for identification purposes;

(i) A statement notifying potential proposers that an announcement does not commit DOE to pay any proposal preparation costs and that DOE reserves the right to select for award or support any, all, or none of the proposals received in response to an announcement, and

(j) A late proposal provision (see FAR 15.412).

917.7301-4 Information to be provided in proposals.

(a) All proposals should be specific, concise, and require inclusion, as appropriate, the following information:

(1) Name and address of the entity(ies) submitting the proposal;

(2) Date of proposal submission;

(3) Identification of the PRDA (by number and title) to which the proposal responds;

(4) Type of entity(ies) submitting the proposal, whether public (including State and local governments), or private (including profit and nonprofit organizations and educational institutions);

(5) Concise title and abstract of the proposed project or effort;

(6) An outline and narrative of the proposed effort which shall specifical-

ly address and reference the evaluation criteria and, to the extent possible, include:

(i) Objectives of the proposed effort;

(ii) Detailed plan of approach (procedures, concepts, limitations, timetables of key milestones, and expected accomplishments or research results);

(iii) Internal management controls applicable to conduct of the work;

(iv) Scope and methods of management support;

(v) Details concerning previous or ongoing work performed in the category(ies) of research proposed, or in related fields;

(vi) Form and amount of funding, or other contribution, if any, to be provided by the proposer;

(vii) Location where the work will be performed;

(viii) Cost schedule detailing estimated costs for manpower and other resources (SF 1411 with supporting data as described at FAR 15.804-6); and

(ix) Projected date of completion of the proposed effort;

(7) Resumes of key personnel to be involved which include a description of relevant experience and associated dates;

(8) A current financial statement;

(9) Period for which the proposal is valid (if other than that stipulated in the announcment);

(10) Names and telephone numbers of proposer's primary business and technical personnel whom DOE may contact during evaluation; and

(11) Signature and title of an official of the proposing organization(s) authorized to obligate such organization(s).

(b) Proposer should be advised that if a proposal will contain proprietary data or privileged business information which the proposer intends to be used by the DOE for evaluation purposes only shall be marked on the cover sheet with the notice prescribed in 927.402-3(d).

(c) Representations, certifications and acknowledgements required by law or regulation shall also be submitted as specified in the announcement.

917.7302 Cost participation.

The provision of DOE's cost participation policy in 917.70 shall apply, as applicable, to proposals submitted in response to PRDA's.

917.7303 Method and criteria for evaluation and selection.

(a) *General policy.* Information contained in proposals offered in response to PRDAs shall be handled in accordance with the policies and procedures set forth in 927.402-3(d) pertaining to the marking and handling of proprietary data and privileged business information.

(2) Late proposals, modifications of proposals, and withdrawals of proposals shall be handled in accordance with FAR 15.412.

(b) *Selection panel.* A panel appointed by the cognizant program office will evaluate proposals submitted in response to a PRDA. The panel will be composed of program office and other personnel, including representatives from Procurement, Counsel, and, as deemed appropriate by the appointing official, supplemented by personnel from other Government agencies. The representative of Counsel will be an ex-office (nonvoting) member of the panel. Personnel from prime management or operating contractors may be used as advisors to the panel when their services are necessary and available as long as the approvals and procedures in 927.70 are followed.

(c) *Evaluation criteria.* The evaluation criteria shall be specified in the announcement along with a narrative description of their relative importance. The following items are illustrative of the elements which may be considered as evaluation criteria:

(1) Overall technical feasibility of the proposed effort;

(2) Adequacy and relevance of the proposed research plan, including validity tests as related to the proposed goals;

(3) The capabilities, related experience, facilities, instrumentation, or techniques which the proposer possesses and offers, and which are considered to be integral factors for achieving the objective(s) of the proposal:

(4) The qualifications, capabilities, experience, and availability of the proposed key personnel;

(5) The ability of the proposer to furnish necessary financial support;

(6) Project and financial plans for management of the activities including the adequacy of proposed arrangements among all participants.

(7) Plans for involvement of the small business community.

(8) Cost realism and probable cost to the government.

(d) *Program policy factors.* Program policy factors are those factors which, while not appropriate indicators of a proposal's individual merit (i.e., technical excellence, proposer's ability, cost, etc.) are relevant and essential to the process of choosing which of the proposals received will, taken together, best achieve the program objectives. All such factors shall be predetermined and specified in the announcement so as to notify proposers that factors which are essentially beyond their control will affect the selection process. The following are examples of possible program policy factors:

(1) It is desirable, because of the nature of the energy source, the type of projects envisioned, or limitations of past efforts, to select for award or support a group of projects with a broad or specific geographic distribution;

(2) It is desirable to select for award or support (for reasons which must be stated) projects for diverse types and sizes of proposing organizations;

(3) It is desirable to select for award or support a group of projects which represent a diversity of methods, approaches, applications, or kinds of work; and

(4) It is desirable, due to the nature of certain projects or proposing organizations, to select for award or support duplicative or complementary efforts or projects.

(e) *Selection official.* The selection official will be as provided in 915.612.

(f) *Preliminary review.* (1) Prior to making a comprehensive evaluation of a proposal, the selection panel shall determine that it:

(i) Contains sufficient technical, cost, and other required information to enable comprehensive evaluation; and

(ii) Has been signed by a responsible official of the proposing organization or a person authorized to obligate such organization.

(2) If the proposal does not meet these requirements, a comprehensive evaluation shall not be made. In such case, a prompt reply shall be sent to the proposer, indicating the reason(s) for its not being selected for award or support under the PRDA.

(g) *Comprehensive evaluation.* The basic task in the evaluation and selection proposals for award or support is to assess their relative merit in order to determine which of them offer the greatest likelihood for achievement of the program objectives stated in the announcement, considering technical quality, ability of the proposer, estimated cost, and other relevant factors. Proposals which survive preliminary review shall be evaluated by the panel in accordance with the criteria stated in the announcement. The Source Selection Official will select proposals for support or award from the findings established by the panel. The selection official will take into account the relevant program policy factors in order to determine the mix of proposed projects which will best further specific program goals. All findings and selections are to be documented, signed, and maintained to provide an adequate record of the proceedings.

917.7304 Award or support.

While only those proposals which best further the needs of the program as specified in the announcement will be considered for award or support, DOE may accept for award or support, all, none, or any number part of the proposals submitted.

Subpart 917.74—Acquisition, Use, and Disposal of Real Estate

917.7400 Scope of subpart.

This subpart addresses DOE policies and procedures to be applied in DOE cost-type contracts which include authorization to acquire, use, and dispose of real estate or interest therein for the performance of a contract or conracts; and, DOE assumes liability for, or otherwise will pay, or may be expected to pay, for the acquired real estate as a reimbursable contract cost.

917.7401 General.

Ordinarily Government agencies are not directly concerned with the real estate management procedures for fixed price or cost-type contractors. However, special circumstances and situations arise under cost-type contracts when, in the performance of their contract or subcontract, the performer shall be required, or otherwise find it necessary, to acquire real estate or interests therein by:

(a) Purchase, on DOE's behalf or in its own name, with title eventually vesting in the Government.

(b) Lease, and DOE assumes liability for, or otherwise will pay for the obligation under the lease.

(c) Acquisition of temporary interest through easement, license or permit, and DOE funds the cost of the temporary interest.

917.7402 Policy.

It is the policy of the Department of Energy that when the real estate acquisitions described in 917.7401 are made, the following policies and procedures shall be applied to such acquisitions:

(a) Real estate acquisitions shall be mission essential; effectively, economically, and efficiently managed and utilized; and disposed of promptly, when not needed;

(b) Acquisitions shall be justified, with documentation which describes the need for the acquisitions, general requirements, cost, acquisition method to be used, site investigation reports, site recommended for selection, and property appraisal reports; and

(c) Acquisition by lease, in addition to the requirements in paragraphs (a) and (b) of this section:

(1) Shall not exceed a one-year term if funded by one-year appropriations.

(2) May exceed a one-year term, when the lease is for special purpose space funded by no-year appropriations and approved by the Department.

(3) Shall contain an appropriate cancellation clause which limits the Government's obligation to no more than the amount of rent to the earliest cancellation date plus a reasonable cancellation payment.

(4) Shall be consistent with Government laws and regulations applicable to real estate management.

917.7403 Application.

(a) The Officer of Project and Facilities Management is the Headquarters contact point for Departmental policies and procedures governing the acquisition, use, and disposal of the Department's real estate or interests therein. Real estate interests include purchases, leases, easements, permits and licenses.

(b) It is the contracting officer's responsibility to coordinate with the Office of Project and Facilities Management when contractor real estate acquisitions meet the criteria set forth in 917.7401 in order to assure that appropriate procedures are followed by the contractor.

(c) The clause at 952.217-70 will be included in contracts or modifications where contractors acquisitions are expected to meet the criteria specified in this subpart.

917.7404 Competition.

(a) Contracting officers shall make certain that solicitation documents:

(1) Require proposals to specify additional facilities and equipment which must be acquired for contract performance, the estimated cost of individual items, and whether acquisition of such property will be financed by the prospective contractor or whether the Government will be requested to provide the required items.

(b) Explain whether it is the Government's intention to provide property, when it is known prior to solicitation that contract performance will require additional facilities or equipment.

(c) Require prospective contractors to:

(1) List items (including dollar value) of Government-owned property in the offerors possession which is proposed to be used in performance of the prospective contract;

(ii) Identify the contract or other instrument under which the property is accountable; and

(iii) Present written permission to use such property in the performance of the prospective DOE contract from the Government contracting officer having cognizance of the property.

(d) Include a statement that the user will assume all costs related to making the property available for use (e.g., transportation, installation, rehabilitation, modification, etc.) unless the Government is to assume such costs.

(e) Include a statement which explains the consideration to be given Government property during evaluation of bids and proposals. This is insure that all prospective bidders and offerors understand that Government property will be an important consideration in evaluating their bids and proposals.

Subpart 917.75—Multiple Awards-Phased Acquisitions

917.7500 Scope of subpart.

Some projects lend themselves to the use of multiple phase, parallel contracts. The basic decision in regard to the use of multiple awards for phased acquisitions will be made by the program office based on technical, schedule, and cost considerations. In the first phase, more than one contractor may undertake a design effort. For the second and succeeding phases, one or more contractors may then be selected from the preceding phase's participants. Since there is an important selection decision to be made at the end of any phase, explicit evaluation and selection procedures will be made known to the contractors prior to competitive selection for succeeding phases.

917.7501 RFP provisions.

Where multiple awards for phased acquisitions are contemplated, requests for proposals (RFPs) for the initial phase shall include:

(a) Notice that the initial negotiated contract will be for Phase I only; however, the Government reserves the right to require a proposal(s) for additional phases of the project as defined in the provisions of the RFP.

(b) If appropriate, notice that competition on subsequent phases will be restricted to the Phase I contractor(s).

(c) Evaluation and qualification criteria should not ordinarily be restricted to Phase I consideration only, but rather should be designed to assure that selected offerors have the requisite technical, management and financial capacity to compete for and perform all phases.

(d) A requirement that each contractor submit a proposal to perform subsequent phases. Instructions for proposal submission and the evaluation criteria to be used in the selection of contractor(s) for subsequent phases will be provided to the Phase I contractors, by letter, as early as possible and at least 90 days prior to the date for submission of proposals.

(e) A requirement of each Phase I, or subsequent phase, contractor to submit a comprehensive report covering actual and projected accomplishments under the present phase. This information will be used in addition to the proposal and the Government's assessment of contractor performance in the evaluation and selection process for subsequent phases. The report shall, as a minimum address the technical, schedule, and cost aspects of the phase of work now under contract.

917.7502 Evaluation.

(a) The contracting officer or other source selection official as appropriate, shall establish an evaluation team sufficiently in advance of the Phase II proposal due date. The evaluation team shall consist of a chairman from the program office and representatives of procurement and other DOE programmatic or functional areas as appropriate. Counsel will be included as a non-voting advisory member of the evaluation team as deemed appropriate.

(b) The evaluation team will develop the evaluation criteria and proposal instructions to be furnished to the contractors. The purpose of the evaluation is to select that or those offerors which best satisfies the DOE requirements for successful completion of the project. The evaluation shall consider such factors as technical, price, programmatic and other requirements. The evaluation process shall be accomplished in an impartial, equitable, comprehensive, and timely fashion to assure the selection of one or more organizations, which offer the best possibility for successful performance, cost and other factors considered. It is contemplated that the initial phase of multiphase parallel contracts awarded under these procedures will be performed in the same timeframe so that a single competitive evaluation and selection can be accomplished at one point in time. Accordingly, the contracts should contain provisions permitting the Government to synchronize contractor Phase I performances through acceleration or deceleration, as is appropriate, to achieve simultaneous completion of the Phase I activities by all firms under consideration. A thorough and detailed evaluation shall be completed so as to provide the basis on which the best selection can be made.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 919—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 919.2—Policies

Sec.
919.201 General policy.

Subpart 919.5—Set-Asides for Small Business

919.501 General.
919.502-2 Total set-asides.
919.503 Setting aside a class of acquisitions.

Subpart 919.6—Certificates of Competency and Determinations of Eligibility

919.602-1 Referral.

Subpart 919.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

919.705-2 Determining the need for a subcontracting plan.
919.705-5 Awards involving subcontracting plan.
919.705-6 Postaward responsibilities of the contracting officer.
919.708 Solicitation provisions and contract clauses.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 11997, Mar. 28, 1984, unless otherwise noted.

Subpart 919.2—Policies

919.201 General policy.

(c) The Director, Office of Small and Disadvantaged Business Utilization and small disadvantaged business programs. The Executive Director, Federal Energy Regulatory Commission, is responsible for the administration of the Commission's small and small disadvantaged business programs. This includes responsibility for developing, implementing, executing, and managing these programs, providing advice on these programs, and representing DOE before other Government agencies on matters primarily affecting small and small disadvantaged businesses. Heads of Contracting Activities (HCAs) shall appoint a small business/small disadvantaged business (SB/DB) specialist.

[50 FR 12185, Mar. 27, 1985]

Subpart 919.5—Set-Asides for Small Business

919.501 General.

(c) The Department has established an internal comprehensive review and screening process for acquisitions exceeding $10,000. The review is intended to enhance the prospect of participation by small business, small disadvantaged business, and women-owned small business concerns.

(g) The policy prescribed by FAR 19.501(g), which requires that a product or service acquired by a successful small business set-aside shall continue to be acquired on a set-aside basis, is applicable to DOE on a contracting activity-wide basis. The small and disadvantaged business specialist at a contracting activity shall maintain a list of such small business set-aside awards.

[52 FR 38425, Oct. 16, 1987]

919.502-2 Total set-asides.

In considering set-asides in the area of architect engineer contracts, contracting personnel must first consider the special procedures required by the Brooks Act, Pub. L. 92-582 pertaining to this type acquisition.

919.503 Setting aside a class of acquisitions.

By agreement with SBA, the DOE has established a class set-aside for construction acquisitions not exceeding $3 million, including new construction and repair and alteration of structures. Lists of other class set-asides shall be maintained by all DOE contracting offices. These lists shall be updated at least annually.

Subpart 919.6—Certificates of Competency and Determinations of Eligibility

919.602-1 Referral.

(a)(2) The contracting officer shall coordinate with the small and disadvantaged business specialist and the SBA procurement center representative prior to referring a determination of nonresponsibility of a small business to the SBA Regional Office.

[52 FR 38425, Oct. 16, 1987]

Subpart 919.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

919.705-2 Determining the need for a subcontracting plan.

(a) It is the policy of DOE to comply with the spirit as well as the requirements of Pub. L. 95-507. FAR requires that options be considered in determining whether the dollar value of a contract meets the dollar threshold necessitating a subcontracting plan. Accordingly, if a contract includes options or *similar provisions* which the contracting officer knows at the time of award will result in an overall contract value exceeding $500,000, then, although the ultimate value of the contract may not be known at the time of initial award, a subcontracting plan will nevertheless be obtained *if* substantial subcontracting opportunities are determined to exist. Examples of such actions which may require a subcontracting plan are contracts for basic research, including special research contracts awarded pursuant to Subpart 917.71, which fund a portion of a project under the initial award, with subsequent research funded on an annual basis by contract modification. The plan should be applicable to the basic contract and then be modified, as appropriate, through the life of the contract.

(b) A subcontracting plan is generally not obtained from an offeror until selection of an awardee except in those cases where a plan is requested of all firms in a competitive range (see FAR 19.705-2(d)). When it is determined that a subcontracting plan is required in accordance with FAR 19.705-2, the contracting officer shall request development and submission for approval of a subcontracting plan which includes all of the elements listed in the contract clause at FAR 52.219-9 or shall determine in writing as required by FAR 19.705-2 that a subcontracting plan is not required because subcontracting opportunities do not exist.

(c) A copy of the determination required by FAR 19.705-2(c) shall be provided, prior to award, to the small and disadvantaged business specialist at the contracting activity.

[52 FR 38425, Oct. 16, 1987]

919.705-5 Awards involving subcontracting plan.

(a)(5) Ensure that an acceptable plan is incorporated into and made a material part of the contract by including in every contract with a plan a provision which either incorporates the approved plan into the contract by reference, or makes the plan an attachment to, and thus a part of, the contract. Subsequent revisions to a plan, i.e., revised goals or other changes, may be incorporated by reference on approval of the contracting officer. The subcontracting plan must be included in the official contract file when the plan is incorporated into the contract by reference.

(b) When the exigencies of the situation prevent obtaining a subcontracting plan prior to the award of a letter contract, the plan shall be obtained prior to definitization.

[49 FR 11997, Mar. 28, 1984, as amended at 52 FR 38425, Oct. 16, 1987]

919.705-6 Postaward responsibilities of the contracting officer.

A copy of the notification to the SBA of awards of contracts, amendments or modifications that contain subcontracting plans, as required by FAR 19.705-6(a), shall be provided to the OSDBU.

919.708 Solicitation provisions and contract clauses.

(b) When using the clause at FAR 52.219-9, Small Business and Small Disadvantaged Business Subcontracting Plan, it shall be modified as specified at 952.219-9. The effect of this modification is to relieve DOE contractors and subcontractors from the burden of submitting the SF295 quarterly report since DOE is able to extract this information from the SF294 report. However, in order to do this, DOE must obtain the SF294 on a quarterly basis rather than semiannually. The modification also requires DOE contractors and subcontractors to indicate, at the "Remarks" section of the form, the number and dollar value of awards to labor surplus area concerns if required by the terms of the contract. Upon receipt of these reports, contracting officers shall input the information to the DOE Subcontracting Data System.

(c) Advance approval of the Procurement Executive, or designee, is required prior to including any small and small disadvantaged business concerns incentive subcontracting provision in any solicitation or of this clause in any contract.

PART 920—LABOR SURPLUS AREA CONCERNS

Subpart 920.1—General

Sec.
920.102 General policy.
920.106 Records and reports.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

Subpart 920.1—General

920.102 General policy.

Acqusitions shall be reviewed for potential labor surplus area set-aside consideration in accordance with 919.501(c).

[49 FR 11997, Mar. 28, 1984]

920.106 Records and reports.

Records and reports shall be as required by "A Guide to Preparation of DOE Quarterly Procurement and Financial Assistance Reports."

[49 FR 11997, Mar. 28, 1984]

PART 922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

Subpart 922.1—Basic Labor Policies

Sec.
922.103 Overtime.
922.103-4 Approvals.

Subpart 922.4—Labor Standards for Contracts Involving Construction

922.470 Applicability.
922.471 Decisions and other guides in difficult areas.
922.472 Wage determinations.
922.473 Administration and enforcement.

Subpart 922.6—Walsh-Healey Public Contracts Act

922.608-3 Protests against eligibility.
922.608-4 Award pending final determination.
922.608-5 Award.
922.608-6 Postaward.

Subpart 922.8—Equal Employment Opportunity

922.800 Scope of subpart.
922.802 General.
922.803 Responsibilities.
922.804 Affirmative action programs.
922.804-1 Nonconstruction.
922.804-2 Construction.
922.805 Procedures.
922.807 Exemptions.

Subpart 922.70—Special Concerns Affecting Construction Laborers and Mechanics

922.7000 Scope of subpart.
922.7001 Responsibilities.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 11998, Mar. 28, 1984, unless otherwise noted.

Subpart 922.1—Basic Labor Policies

922.103 Overtime.

922.103-4 Approvals.

(d) *Approvals.* (1) Where the cost to the Government may be affected, approval of hours of work in excess of the normal workweek is justified only in those instances and for those employees where it can be shown that overtime would provide needed and demonstrable impetus to the accomplishment of DOE objectives and that all other means of meeting these objectives have been considered and found inadequate or not feasible. Accordingly, Heads of Contracting Activities shall:

(i) Establish controls to prevent excess casual overtime and to assure that such overtime work is in the best interest of the Government. By casual overtime is meant (A) work in excess of the normal workweek (or in excess of an authorized extended workweek) which cannot be regularly scheduled in advance, or (B) regularly scheduled work in excess of the normal workweek for a period of four consecutive weeks or less; and

(ii) Establish controls to assure that any use of any extended workweek schedule is in the best interest of the Government. Extended workweek means a workweek regularly scheduled and established in excess of the normal workweek for a period in excess of four consecutive weeks.

Subpart 922.4—Labor Standards for Contracts Involving Construction

922.470 Applicability.

(a) Although the statutes required to be followed per FAR 22.400 direction do not contain definitions, the Secretary of Labor's regulations in 29 CFR 5.2 include definitions, of "contract," "building," "work," "construction," "prosecution," "completion," "repair," "public building," and "public work." In general, contracts are classifiable as being covered by the statutes when performance by the contractor consists substantially of the erection or assembly of new plants (including laboratory or other buildings or works), or the alteration and/or repair including painting and decorating, of new and existing plants. The fact that certain contracts may be entered into without regard to general statutory requirements as to advertising for bids or proposals, or upon a cost-reimbursement basis or otherwise, is not determinative in the classification of such contracts, activities, construction projects, or other work or services performed thereunder.

(b) Contracts for servicing or maintenance work are not ordinarily subject to the requirements of this subpart. Maintenance includes the routine, recurring type of work necessary to keep a facility in such condition that it may be continuously used at an established capacity and efficiency for its purpose. However, if such maintenance or service contracts call for substantial and segregable task for construction, alteration or repair, the labor standards provision for construction contracts will be applicable to those items. All contracts in excess of $2,000 for painting of public buildings or public works, whether performed in connection with the original construction or as regular maintenance, are subject to the labor standards provisions for construction contracts.

(c) The requirements that must be followed as a result of FAR 22.4 and other parts of FAR 22 in respect to the Davis-Bacon and Copeland Acts do not apply to the following:

(1) Contracts, regardless of their nature, not in excess of $2,000 (Does not apply to the Copeland Act). However, no item of work, the cost of which is estimated to be in excess of $2,000, shall be artificially divided into portions less than $2,000 for the purpose of avoiding the applicability of the Davis-Bacon Act.

(2) Contracts for furnishing supplies and equipment, including installation, where the installation requires only an incidental amount of work (as defined in paragraph (e) of this section) that would otherwise be considered construction, alteration and/or repair of a public building or public works.

(3) Contracts for servicing or maintenance work in an existing plant, including installation or movement of machinery or other equipment, and plant rearrangement, which involve only an incidental amount of work (as defined in paragraph (e) of this section) that would otherwise be considered construction, alteration and/or repair.

(4) Contracts for operational or maintenance activities (e.g., production, research and development, or community services, as distinguished from contracts for construction). In general, these are contracts where performance by the contractor consists primarily of the utilization of existing facilities and the services of personnel

to produce materials, conduct research and development, or provide community-type services, and of the use of or maintenance of plant. However, the classification of a contract as a contract for operational or maintenance activities does not necessarily mean that all work and activities at the contract location are not covered, since it may be necessary to separate out work which should be classified as covered. As used in connection with "operational activities," the term "produce" means to manufacture, make, or refine special nuclear or other material; to separate material from other substances in which it is contained; or to make new material. The "materials" includes supplies, articles, or equipment; the term "research and development" means the same as defined in 909.570-3.

(5) Contracts to be performed outside the United States and the District of Columbia. (Does not apply to the Copeland Act.)

(6) Contracts for demolition, except when performed as a phase of a covered construction project or when subsequent construction activity at the site being cleared is contemplated.

(7) Contracts with a State or subdivision thereof.

(8) Contracts with railroads for construction services to the extent that the services are performed by railroad employees covered by the Railway Labor Act.

(d) It should be noted, however, that the requirements of FAR Subpart 22.4 do apply to work performed by laborers and mechanics employed by a construction contractor or subcontractor at the site of the work under a contract for the construction, alteration and/or repair, including painting and decorating of public buildings or public works, which is otherwise subject to these Acts whether or not such work would be covered if it were a separate contract.

(e) As used in paragraph (c) (2) and (3) of this section, "an incidental amount of work" is defined to mean work directly related to the installation, movement or rearrangement of equipment or machinery, relatively small in amount, and which does not include changes in a facility affecting its architectural or structural strength, stability, safety, size, or function as a public work.

[49 FR 11998, Mar. 28, 1984; 49 FR 38950, Oct. 2, 1984]

922.471 Decisions and other guides in difficult areas.

The following are examples of applications of the Davis-Bacon Act to particular situations.

(a) *Land-based prototypes.* (1) The Department of Labor has held that the construction of a full-scale operating prototype of a reactor and all necessary nuclear power components, systems, and propulsion equipment for a submarine is covered.

(2) The Department of Labor has held that assembling and fitting the components of nuclear steam propulsion units in a prototype ship situation into the hull sections, including installation of the pressure vessels, turbo-generator sets, heat exchangers, control wiring, etc., is covered.

(3) A later decision involving the prototype situation in (a)(2) above indicates that the earlier rulings should not be construed as intended to cover all equipment assemblies irrespective of the status of construction and other pertinent factors.

(b) *Paving.* The construction of roads, including grading, and their repair—where such repair includes work in roadbeds before resurfacing, building up shoulders, forming ditches, culverts and bridges, and on the actual resurfacing of roads—is covered. However recurring-type maintenance work, such as patching surfaces, filling chuck holes, patching shoulders, and resurfacing railroad crossings is non-covered. Similarly, patch and maintenance work on a parking lot, the replacement of bumper stops, and the repainting of parking dividers is non-covered.

(c) *Stationary boilers.* The construction, alteration and/or repairs, including installation and rebuilding, of stationary boilers costing in excess of $2,000 for labor and materials is covered. Inspection may reveal a need for replacement of pieces of insulation, individual tubes, or other defective parts. Such minor maintenance, necessary to keep the boiler in safe operating condition, is non-covered.

(d) *Start-up of operating activity after fire or other catastrophe.* Rebuilding of a plant following a catastrophe, such as replacement of structural members, roof trusses, walls, roof, utility services, and process piping is covered. However, where process equipment can be restarted and/or operational activities resumed prior to such rebuilding, the actual work of start-up, including preliminary activity, e.g., cleaning, drying, checking, adjustment, temporary services, and temporary weather protection of equipment, essential to such resumption of operational activity, is non-covered.

(e) *Rehabilitation of facilities.* By contrast with emergency services needed to restore or maintain functional usefulness, as above described, rehabilitiation (e.g., painting, change-out, rearrangement and installation of equipment, replacement or repair of damaged parts of a structure or of building services or equipment) of a facility is covered. In such rehabilitation, the startup of equipment by operating employees is non-covered.

(f) *Painting.* Although painting and decorating are specifically mentioned in the Davis-Bacon Act, painting which is closely integrated within operation and maintenance activities and such repainting as color coding of process lines and service piping (including valves and directional arrows), is non-covered. Likewise, application of various materials for localizing contamination, painting of machine tools to identify degree of contamination, and preventive maintenance such as repainting of machine tools, equipment and plant structures are non-covered when performed with a stable work force employed by the operating contractor.

(g) *Installation, rearrangement of adjustment of equipment.* (1) *During construction.* In the construction of a new facility—whether it is a production plant, a laboratory, or supporting facilities, such as shops and warehouses—an integral part of a construction project is the installation of equipment (including mechanical equipment, building services, instruments, etc.) which permits the facility to be utilized for the purpose intended. Normally, the initial installation, arrangement, adjustment, balancing, calibration, and checking of such equipment is a logical part of the construction contract(s) for completion of the facility and, whether or not included within the scope of such contract(s), is covered.

(2) *Plant start-up.* At the time of the turnover of a DOE facility from construction to operating activities, if the facility is turned over a section at a time, some problems of coverage may arise. Usually, it is essential that final checkout of a plant prior to the start-up of plant operations be performed by personnel of the operating organization and, as such, is not covered. The important thing is to work out a practical plan that will assure: (i) Safe and effective start-up of the facility, (ii) the fulfillment of obligations under applicable statutes, and (iii) uninterruption of continuing construction at the facility.

(3) *Equipment and equipment assemblies.* Although the current construction status of a public building or public work is not the controlling factor as to coverage of supply-installation type contracts, it is a factor to be considered in judging the applicability of the Davis-Bacon Act. The Department of Labor has ruled (Walsh-Healey Rulings and Interpretations No. 3, section 6(b)) that while contracts in excess of $10,000 for equipment, including erection or installation, are subject to the Walsh-Healey Act, they may be also covered under the Davis-Bacon Act where more than an incidental amount (see 922.470(e)) of work is involved. Examples given in this ruling include furnishing and installation of mechanical equipment such as elevators or of generators requiring prepared foundations or housing. The Department has indicated that a contract for furnishing the initial installation of piping, wiring, gas exhaust fans, plumbing, sheet metal work, and related activities to install kitchen baking equipment was comparable to the basic plumbing, wiring, and heating contracts and was covered. While such a situation involves an initial installation, alteration or re-

arrangement of existing facilities involving such work to accommodate new or different equipment is also covered. Conversely, it follows that where the test of more than an incidental amount of construction is not met, and where the installation, rearrangement or adjustment of equipment is not a logical part of any current related construction project, it is non-covered.

(4) *Telephone and utility systems.* Contracts involving the installation of telephone systems or utilities are not covered when the work is performed by employees of the telephone or utility company supplying the services, and the material and equipment installed are owned by the telephone or utility company. Such installation is considered to be an extension of the utility's services. However, a contract for a telephone central system to be installed by the manufacturer and owned by the United States has been held to be covered. In addition, relocation of utility lines to accommodate construction of a public work is covered.

[49 FR 11998, Mar. 28, 1984; 49 FR 39851, Oct. 2, 1984]

922.472 Wage determinations.

(a) The Heads of Contracting Activities are responsible for submitting to the Wage and Hours Division, Employment Standards Administration, Department of Labor, Washington, DC 20210, all DOE requests for wage determinations, or individual determinations, or extensions or modifications thereto. Requests for such determinations shall be made on Standard Form 308, at least 30 calendar days before they are required for use in advertising for bids or requests for proposals.

(b) In general, the Davis-Bacon Act rates applicable to a contract at the time it is awarded continue in effect during its term regardless of whether it is a fixed-price or cost-reimbursement contract. However it should be noted that:

(1) The minimum wage rates that will be paid to laborers and/or mechanics engaged on jobs which are programmed on a fiscal year or shorter basis are those predetermined by the Secretary of Labor to be prevailing as of the date the program is approved by DOE for performance by the contractor. However, in the event of a substantial addition to the scope of a contract containing a "general or area wage determination," the current "general or area wage determination," including modifications thereto, shall be made applicable to the additional work. If the contract contains a "project area or installation (54A) determination," or an individual determination, and substantial addition to the scope of the contract is made during the fiscal year or shorter basis but more than 120 days from the date of the determination, a new determination is required for the substantial addition. Programmed work will be performed by the contractor under continuing contracts for minor or miscellaneous construction, alteration and/or repair, including painting and decorating.

(2) The minimum wage rates that will be paid to laborers and/or mechanics engaged on subcontracts let by an operating contractor will be those in the wage determination decision of the Secretary of Labor which has been issued in conformance with 29 CFR 1.7.

(c) The FEDERAL REGISTER prints general or area wage determinations as they are issued by the Secretary of Labor or designee.

[49 FR 11998, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984]

922.473 Administration and enforcement.

(a) The statutes and regulations alluded to in FAR 22.400 impose direct responsibilities for administration and enforcement upon DOE. Therefore, Heads of Contracting Activities and others, consistent with their assignments of responsibilities and delegations of authority, shall assure that DOE contract activities are carried out consistent with these laws and regulations.

(b) Heads of Contracting Activities shall submit (to the Office of Contractor Industrial Relations) reports, recommendations, and requests for ruling and interpretations resulting from following the requirements of FAR 22.400 and 922.400.

Subpart 922.6—Walsh—Healey Public Contracts Act

922.608-3 Protests against eligibility.

When an eligibility determination made by the contracting officer is challenged, this protest shall be handled in accordance with procedures for agency protests against award, except the matter shall be submitted to the Department of Labor for final determination. However, if the eligibility determination challenged pertains to a small business, the protest shall be forwarded to the Small Business Administration for determination.

922.608-4 Award pending final determination.

(a) Award, as contemplated by FAR 22.608-4, may be made only with the approval of the Head of the Contracting Activity.

922.608-5 Award.

The notice required by FAR 22.608-5(b) is to be sent to the appropriate Department of Labor Regional Office in which the contractors place of business is located. Regional Office locations are specified at FAR 22.609.

922.608-6 Postaward.

(c) Any postaward actions of the type discussed at FAR 22.608-6 should be coordinated in advance with the Office of Industrial Relations, Headquarters.

Subpart 922.8—Equal Employment Opportunity

922.800 Scope of subpart.

This subpart implements FAR 22.800. It applies to all DOE contracts and subcontracts.

922.802 General.

922.803 Responsibilities.

(a) The Director, Office of Federal Contract Compliance Programs of the Department of Labor has been delegated authority and responsibility for carrying out the requirements of Executive Order 11246, as amended. In conjunction with the delegation, contracting officers shall be familiar with existing and any updated provisions of 41 CFR Ch. 60, and assist the Department of Labor in its compliance responsibilities. DOE contracting officers will include the applicable Equal Employment Opportunity (EEO)) and Affirmative Action Program (AAP) requirements in their solicitations and obtain the applicable reports of compliance from the Office of Federal Contract Compliance Programs (OFCCP) (when required) prior to awarding of contracts. The provisions of 41 CFR Ch. 60, are applicable to all DOE contracts.

(d) The OFCCP requires that requests for pre-award clearances be directed to the OFCCP Regional Office in which the contractor's facility is (to be) located. If OFCCP finds the contractor in compliance, the contracting officer will be notified. Findings of non-compliance can be communicated to the contracting officer by the OFCCP or Headquarters Director or his designee. The appropriate Regional Office will provide the appropriate contact point in cases of non-compliance. The Director, Office of Industrial Relations (DOE HQ), when requested, will provide assistance to contracting officers resolving non-compliance issues by providing assistance in obtaining a final decision from the OFCCP.

[49 FR 11998, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984]

922.804 Affirmative action programs.

922.804-1 Nonconstruction.

In the event a prospective contractor or subcontractor is entering into its first contract containing the Equal Opportunity clause, the contracting officer shall determine that the prospective contractor understands and appears able to conform to the requirements of the EEO clause.

922.804-2 Construction.

(a) Construction contracts, including cost-sharing contracts, are subject to OFCCP orders applicable in particular areas.

(1) When a proposed nonexempt construction contract is within a geographic area where construction is

subject to the provisons of Federal EEO Bid Conditions, Part I or Part II, the solicitation shall contain those bid conditions. The contracting officer shall include in such solicitation a provision that "the offeror shall adhere to the affirmative action plan (bid conditions) set forth in this solicitation."

(2) Lists of areas for which OFCCP has designated specific affirmative action requirements are available through the Procurement Executive. Contracting officers should assure that this list and copies of pertinent orders are made available to all concerned DOE offices and to DOE contractors and construction subcontractors for work to be performed in the specified geographical areas.

(b) *Other nonexempt construction contracts.* (1) When a proposed nonexempt construction contract is not in a "plan area" and is in the amount of $10,000 or more, offerors must agree to comply with the Equal Employment Opportunity clause.

(2) When proposed nonexempt contracts of $1,000,000 or over are not in plan areas and have not been designated as high impact, offerors also must submit to the contracting officer details regarding specific affirmative action steps to be taken by the offeror in connection with all work under the contract. Such details shall include estimates of the percentage of minority group persons expected to be employed in each craft involved in the performance of the contract work. All solicitations for construction contracts shall reference the affirmative action requirements and the offeror's obligation to make good faith efforts to employ women in craft positions.

(3) Pursuant to the OFCCP order dated August 30, 1976, agencies shall develop "Special Bid Conditions" for use on high impact projects in nonplan areas. These special bid conditions will include mandatory goals and timetables for the utilization of minorities. The Procurement Executive using the criteria issued by OFCCP will determine those projects that are "high impact." The contracting officer is responsible for compliance with policies and procedures contained in the OFCCP "Construction Compliance Program Operations Manual." Language for inclusion in solicitations or contracts contained in the manual may be modified, provided all of the requirements are retained. The contracting officer shall develop the goals and timetables and shall confer with the appropriate OFCCP regional office. The Office of Industrial Relations will provide assistance as necessary, when requested. Special bid conditions will be submitted by the contracting officer to the appropriate OFCCP regional office for approval unless otherwise directed by the Procurement Executive. When special bid conditions are applicable, adequate presolicitation lead time should be allowed for submission of the special bid conditions to OFCCP national and regional offices.

(c) An attempt to limit in any major respect the equal opportunity requirements included in an invitation for bids or request for proposals for a construction contract shall constitute grounds for a determination that the offeror does not qualify as a responsible offeror and for rejection of the bid or proposal.

922.805 Procedures.

(b) *Furnishing posters.* The contracting officer may obtain posters from the Government Printing Office.

922.807 Exemptions.

(c) Contracting officer requests for exemption from E.O. 11246 should be directed to the Procurement Executive for submission to the Director, OFCCP.

Subpart 922.70—Special Considerations Affecting Construction Laborers and Mechanics

922.7000 Scope of subpart.

This subpart discusses DOE responsibilities and actions regarding DOE construction programs.

922.7001 Responsibilities.

(a) *General.* (1) As collective bargaining arrangements exist generally throughout the construction industry, the wages, hours and working conditions followed for construction laborers and mechanics normally will result from collective bargaining between management and labor. It is important that practices contributing to harmonious labor-management relations prevail throughout the DOE program. All participants in the DOE program, including employees and their unions, have a special and continuing obligation to do their part in accomplishing a stable, efficient construction operation under adequate and reasonable conditions.

(2) In some areas, DOE construction is a minor part of local construction activity, while in other areas DOE construction may, at times, overshadow local construction. Normally, there will be a number of contractors and subcontractors, both cost-type and fixed price, engaged simultaneously on a single large DOE project. It is important that adequate coordination exist among all such contractors in order that similar conditions are provided for all construction employees, in a given classification, at a particular location.

(3) The problem of establishing appropriate conditions for the large projects is complicated by the essential requirements that initial conditions be clearly identified and fixed prior to recruitment of work force. This factor involves applicability of all pertinent Federal statutes, including the Davis-Bacon Act and the Labor Management Relations Act of 1947, as amended (29 U.S.C. 141 *et seq.*).

(b) *Steps preliminary to the staffing of new cost-reimbursement projects.* Preliminary to the actual recruitment of workers, it is important that sufficient data be accumulated by the field office concerned to reflect area practices accurately. These data should cover in detail the pattern of bargaining in the area; the proportion of the work force employed by employer parties to collective bargaining agreements in relation to the total construction work force; the terms of local area agreements; the extent of conformance with such agreements and any accepted interpretations of them; and a description of practices which may have developed outside of the local agreements. These data will furnish the basis for decisions contemplated in (c) and (d) of this section. Where the data indicate local agreements are adequate for the contemplated work, there may still be areas that need to be filled by additional understandings to attain the desired stability of conditions. The data obtained in the initial survey will also be used in connection with the original Davis-Bacon predetermination.

(c) *Role of project contractor management in collective bargaining.* The DOE expects contractor management engaged in the negotiation and/or administration of collective bargaining agreements to assume responsibility for assuring conditions which are consistent with the judicious expenditure of public funds, attracting and retaining the skills needed, and giving due consideration to the community's interests and established standards. To meet these responsibilities, it is important that the collective bargaining role to be played by project contractor management be clearly determined in the light of project requirements and local conditions.

(1) In an area where DOE construction does not overshadow total local construction activity, and the majority of construction is performed by members of local contractor associations, the DOE expects that basic conditions for labor on its projects will be negotiated between the local contractor associations and local unions and generally adhered to on construction work in the area. In such situations, DOE contractors will provide for clear identification and application of these local agreements to the DOE work. In such applications, the conditions to be followed will be those which obtain in actual practice in the area covered by the agreement and are consistent with applicable laws, rather than those appearing from a literal interpretation of the language of the agreement. Conditions not covered by local agreements may be provided for as necessary to meet project goals.

(2) In some areas, local agreements may be nonexistent, or inadequate, or the employer parties may not be representative of the employers of the bulk of the labor force in the area. In such event, DOE contractors are expected to carry their share of the responsibility for negotiations and to ne-

gotiate directly or in cooperation with others to establish appropriate conditions.

(3) In an area where DOE construction work is of such magnitude as to overshadow local construction, it may be desirable for DOE contractors to negotiate special project conditions (on either a craft or a multi-craft basis) as the best way to meet their obligations to the DOE. Such agreements usually involve the establishment of new bargaining units and are therefore dependent upon the voluntary cooperation of the building trades unions. Normally both the Building Trades Department (AFL-CIO) and the Senior Official, Office of Industrial Relations, should be consulted in respect to any proposed course of action.

(d) *Role of DOE in construction labor relations.* The DOE's role in construction labor relations is one of overall cognizance consistent with DOE's ultimate responsibilities. The scope of the construction program, the complexity of the problems which may arise, and the need for coordination among contractors at the same site are factors which affect the degree of influence exercised by DOE in carrying out the following responsibilities:

(1) To assure that careful advance survey and analysis is made of each contract situation and that the role of the contractor management is in accordance with the considerations in (c) above;

(2) To establish effective machinery for coordination among project contractor management;

(3) With respect to DOE contracts carried out under area practices, to assure that conditions proposed are actually prevalent in the area or have other substantial foundation and that, to the extent consistent with the terms of fixed-price contracts, practices established by fixed-price contractors are not of a character that will destabilize other DOE work;

(4) With respect to DOE contracts carried out under project agreement, both union and management, to take into account all relevant factors pertaining to any conditions peculiar to the project, duration of project, tenure of employment, housing and travel accommodations, length of regular work week, uniformity of shift, special subsidies, etc.;

(5) To encourage contractor officials and representatives of employees to establish similar conditions among all construction employers for each class or classification of employees at a particular location;

(6) To encourage contractor officials and representatives of employees to provide clear identification and application of practices under local agreements, or to make and maintain project agreements on DOE construction projects; and

(7) To encourage contractor officials and representatives of employees to establish reliable working contact between the DOE project contractors and any unions that are cooperating in staffing the job.

(e) *Initial wage rates.* The wage rates initially established under both cost-reimbursement and fixed price contracts will not be less than, and will normally conform to, those determined by the Secretary of Labor pursuant to the requirements of the Davis-Bacon Act. On cost-reimbursement work, the total compensation on the DOE project will be comparable with the total compensation allowed similar workers in an appropriate area of comparison. Where the DOE project is applying the practices under local agreements, the area of comparison normally will be the geographic area within the jurisdiction of each local union cooperating in staffing the project. In this situation, the application of local practices and agreements will usually be carried out on an item-by-item basis. Where a project agreement has been agreed on as the foundation for project conditions, the area of comparison for each craft should be large enough to provide a sound base which will result in realistic wage rates. In the development of a project agreement, the Office of Industrial Relations should be consulted.

(f) *Adjustments in compensation.* Subject to limitations imposed by applicable labor laws, changes in established wage rates and working conditions under cost-reimbursement contracts may be effected as follows:

(1) Adjustments in wage rates and other job conditions established in

project collective bargaining agreements may be effected by the renegotiation or modification of the agreements at appropriate times and by the reopening of existing agreements as provided therein. The Office of Industrial Relations should be consulted as to appropriate criteria to follow in review of such reopenings.

(2) In situations where DOE contractors working under cost-reimbursement type contracts apply local established job conditions included in applicable bargaining agreements, adjustments in wages and job conditions may coincide with changes within the locality. Wage rates may bé adusted to bring rates into conformity with new rates which are verified as established in the area at the time of their acceptance for DOE work.

(g) *National Joint Board for the Settlement of Jurisdictional Disputes in the Building and Construction Industry.* Construction contractors and representatives of employees are encouraged to settle craft jurisdiction disputes, in accordance with the procedural rules and regulations of the National Joint Board.

(h) *Responsibility of the Office of Industrial Relations.* The Office of Industrial Relations, Headquarters, is responsible for coordinating all activities arising under this subpart, and for maintaining liaison with the Department of Labor, the Building Trades Department (AFL-CIO), and other construction labor and employer organizations.

[49 FR 11998, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984]

PART 923—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

Subpart 923.70—Environmental, Conservation, and Occupational Safety Programs

Sec.

923.7001 Nuclear safety.
923.7002 Contract clauses.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

Subpart 923.70—Environmental, Conservation, and Occupational Safety Programs

923.7001 Nuclear safety.

(a) The DOE regulates the nuclear safety of its major facilities under its own statutory authority derived from the Atomic Energy Act and other legislation. The DOE also regulates, under certain specific conditions, the use by its contractors of radioactive materials and ionizing radiation producting machines.

[49 FR 12003, Mar. 28, 1984]

923.7002 Contract clauses.

(a) A decision to include or not include environmental, safety and health clauses in DOE contracts shall be made by the contracting officer in consultation with appropriate environmental, safety and health program management personnel.

(b) When work is to be performed at a facility where the DOE will exercise its statutory authority to enforce occupational safety and health standards applicable to the working conditions of the contractor and subcontractor employees at such facility, the clause at 952.223-71 shall be used in such contract or subcontract if conditions (a) (1) through (3), are satisfied:

(1) DOE work is segregated from the contractor's or subcontractor's other work;

(2) The operation is of sufficient size to support its own safety and health services; and

(3) The facility is government-owned, or leased by or for the account of the government.

(c) In facilities not meeting the requirements of 923.7002(b) above and which are a production or utilization facility where there is use or possession of source, special nuclear, or byproduct materials, DOE policy is not to enforce radiological safety and health standards pursuant to the contract or subcontract but rather to rely upon Nuclear Regulatory Commission (NRC) licensing requirements (including agreements with states under section 274 of the Atomic Energy Act). Pursuant to this policy, neither the clause found at 952.223-71 nor 952.223-72 is to be incorporated in the contracts or subcontracts for work at such facilities. Notwithstanding this general policy with respect to facilities not meeting the requirements of paragraph (b) above, the Secretary or his designee may determine in special cases, that DOE needs to enforce radiological safety and health standards pursuant to the contract or subcontract (see paragraph (d) below). When such a determination is made, the clause found at 952.223-72 shall be included in the contract or subcontract.

(d) In facilities not meeting the requirements of either 923.7002(b) or 923.7002(c) of this section and where there is a machine capable of producing ionizing radiation, it is DOE policy not to regulate such activity where it is adequately regulated by a state or other Federal agency. In such cases, neither clause 952.223-71 nor 952.223-72 shall be incorporated in the contract. Where the contracting officer, with appropriate environmental, safety and health advice determines that no state or other Federal agency exists to adequately regulate the operation and/or use of such machines, the clause found at 952.223-72 shall be included in the contract. The Deputy Assistant Secretary for Environment, Safety and Health shall be consulted to determine if a non-agreement (NRC) state or a facility located in a non-agreement state has been reviewed by any other DOE office to establish that the state agency has the essential authority and resources for enforcing the radiation protection standards. This is to assure reasonable consistency in the assessment of radiation protection in non-agreement states and subsequent use of 952.223-72.

(e) In a situation where the contractor or subcontractor is performing DOE work at more than one location, inclusion of either, or both, 952.223-71 and 952.223-72 may be appropriate. In such cases, the contract or subcontract must include language to specify the extent of applicability of each clause used. For example, with a parenthetical: (Applicable only to work performed at a contractor site which has 952.223-71 or 952.223-72 clause in its contract or subcontract).

[49 FR 12003, Mar. 28, 1984]

PART 924—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 924.1—Protection of Individual Privacy

Sec.
924.103 Procedures.

Subpart 924.2—Freedom of Information Act

924.202 Policy.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

Subpart 924.1—Protection of Individual Privacy

924.103 Procedures.

(b)(2) See 10 CFR Part 1008, Records maintained on Individuals (Privacy Act), for the DOE regulations relating to the maintenance or disclosure of information from systems of records on individuals. In addition, see DOE order 1800.1, Privacy Act, for internal DOE procedures to be followed in the establishment and maintenance of systems of records.

[49 FR 12003, Mar. 28, 1984]

Subpart 924.2—Freedom of Information Act

924.202 Policy.

(b) See 10 CFR Part 1004, Freedom of Information, for the DOE regulations relating to the availability of DOE records to the public. See 18 CFR Part 388, Public Information and Records, for the regulations relating to the availability of Federal Energy Regulatory Commission records.

[50 FR 12185, Mar. 27, 1985]

PART 925—FOREIGN ACQUISITION

Subpart 925.1—Buy American Act—Supplies

Sec.
925.102 Policy.
925.105 Evaluating offers.

Sec.
925.108 Excepted articles, materials, and supplies.

Subpart 925.2—Buy American Act—Construction Materials

925.202 Policy.
925.204 Violations.

Subpart 925.5—Payment in Local Foreign Currency

925.501 Policy.

Subpart 925.9—Omission of the Examination of Records Clause

925.903 Conditions for omission.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 12003, Mar. 28, 1984, unless otherwise noted.

Subpart 925.1—Buy American Act—Supplies

925.102 Policy

(b) Contracting officers may make the determination required by FAR 25.102(a), provided such determination is factually supported in writing. If the contract is estimated to exceed $1 million, the Head of the Contracting Activity shall approve the determination.

[49 FR 12003, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984]

925.105 Evaluating offers.

(c) Proposed awards shall be submitted (in triplicate) through the Procurement Executive, to the Head of the Agency for decisions required by FAR 25.105(c).

925.108 Excepted articles, materials, and supplies.

(b) Suggestions for changes and additions to the FAR 25.108(d) list, with appropriate justifications, shall be submitted to the Procurement Executive.

Subpart 925.2—Buy American Act—Construction Materials

925.202 Policy.

(b) Contracting officers may make the determination required by FAR 25.202(a)(3). If the cost of the materials is expected to exceed $100,000, the Head of the Contracting Activity shall approve the determination.

925.204 Violations.

(d) Contracting officers shall make a complete written report (in triplicate) to the Secretary through the Procurement Executive of each violation of the Buy American Act—Construction Materials clause at 52.225-5.

Subpart 925.5—Payment in Local Foreign Currency

925.501 Policy.

(b) The contracting officer, prior to award of a contract requiring payment to be made in a foreign currency, should ensure that sufficient DOE funds will be available to purchase the foreign currency needed for making such payments.

(c) The contracting officer, when required by applicable financial regulations or directives, may obligate funds in excess of the current contract price, or contract with a financial organization dealing in foreign exchange for the future delivery of the required foreign currency. The official contract file should be appropriately documented to reflect the amount of funds reserved or other actions to be taken in the event additional U.S. dollars are required to make such payments because of an increase in the value of the foreign currency.

Subpart 925.9—Omission of the Examination of Records Clause

925.903 Conditions for omission.

Any proposed determinations and any reports mentioned at FAR 25.903 shall be forwarded to the Procurement Review Office, Headquarters.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 927—PATENTS, DATA, AND COPYRIGHTS

Subpart 927.3—Patent Rights Under Government Contracts

Sec.
927.300 General.
927.370 Waiver of title to certain sensitive inventions.

Subpart 927.4—Technical Data and Copyrights

927.400 Scope of subpart.
927.401 Definitions.
927.402 Acquisition and use of technical data.
927.402-1 General.
927.402-2 Policy.
927.402-3 Procedures (supply, research, development, or demonstration contracts).
927.403 Negotiations and deviations.

Subpart 927.70—Disclosure of Proposal Information

927.7000 Disclosure outside Government.
927.7001 Proposal information.
927.7002 Treatment of proposal information.
927.7003 Handling notice.
927.7004 Identification of proprietary data in proposals.
927.7004-1 Solicited proposals.
927.7004-2 Solicitations.
927.7004-3 Unsolicited proposals.
927.7005 Required notice of right to request patent waiver.

AUTHORITY: Sec. 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); Sec. 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168); Federal Nonnuclear Energy Research and Development Act of 1974, Sec. 9, (42 U.S.C. 5908); Atomic Energy Act of 1954, as amended, Sec. 152, (42 U.S.C. 2182); Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1987, as amended, Sec. 3131(a), (42 U.S.C. 7261a.)

SOURCE: 49 FR 12004, Mar. 28, 1984, unless otherwise noted.

Subpart 927.3—Patent Rights Under Government Contracts

927.300 General.

(a) The provisions of 41 CFR 9-9.1 shall continue in effect; provided, however, that the provisions of 41 CFR 9-9.107-1 through 9-9.107-6 and 9-9.109-6 shall apply only to contracts with other than small business firms and domestic nonprofit organizations which do not fall within the provisions of 35 U.S.C. 202(a) (i), (ii), or (iii). The following sentences shall be substituted for the first sentence of paragraph (j)(2) of the Patent Rights (Long Form) clause of 41 CFR 9-9.107-5(a) and paragraph (e)(2) of the Patent Rights (Short Form) clause of 41 CFR 9-9.107-6:

> The contractor will include the clause at 952.227-71 "Patent Rights—Small Business Firms or Nonprofit Organizations" of the Department of Energy Acquisition Regulation 48 CFR Part 952 suitably modified to identify the parties, in all subcontracts regardless of tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization. In all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work, the contractor will include the Patent Rights clause of 41 CFR 9-9.107-5(a) or 41 9-9.107-6 as appropriate, modified to identify the parties.

(b) The clause at 952.227-71 shall be used in contracts with small business firms and nonprofit organizations in accordance with OMB Circular A-124 and Chapter 18 of Title 35 of the United States Code.

927.370 Waiver of title to certain sensitive inventions.

(a) Whenever any contractor makes an invention or discovery to which the title vests in the Department of Energy pursuant to exercise of section 202(a) (ii) or (iv) of title 35, United States Code, or pursuant to section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182) or section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908), in the course of or under any Government contract or subcontract of the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy, and the contractor requests waiver of any or all of the Government's property rights, the Secretary of Energy may decide to waive the

Government's rights and assign the rights in such invention or discovery.

(b) In making a decision under this Section, the Secretary or his designee shall:

(1) Apply the stated general objectives for patent waivers under sec. 92.300(a) of this subpart;

(2) Take into account the specific considerations applicable to advance waivers and identified invention waivers, respectively, under sec. 927.300(a) of this subpart;

(3) Consider whether national security will be compromised;

(4) Consider whether sensitive technical information (whether classified or unclassified) under the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy for which dissemination is controlled under Federal statutes and regulations will be released to unauthorized persons;

(5) Consider whether an organizational conflict of interest contemplated by Federal statutes and regulations will result; and

(6) Consider whether waiving such rights will adversely affect the operation of the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy.

(c) A decision under this section shall be made within 150 days after the date on which a complete request for waiver, as described by paragraph (d) of this section, has been submitted to the Patent Counsel by the contractor.

(d) In addition to the requirements for content which apply generally to all waiver requests under sec. 927.300(a) of this subpart, a requestor must include a full and detailed statement of facts, to the extent known by or available to the requestor, directed to the considerations set forth in paragraphs (b)(3) through (6) of this section, as applicable. To be considered complete, a waiver request must contain sufficient information, in addition to the content requirements under sec. 927.300(a) of this subpart, to allow the Secretary or his designee to make a decision under this section. Such information shall include, at a minimum, for advance waiver requests:

(1) An identification of all of the petitioner's contractual arrangements involving the Government (including contracts, subcontracts, grants, or other arrangements) in which the technology involved in the contract was developed or used and any other funding of the technology by the Government, whether direct or indirect, involving any other party, of which the petitioner is aware;

(2) A description of the petitioner's past, current, and future private investment in and development of the technology which is the subject of the contract. This includes expenditures not reimbursed by the Government on research and development which will directly benefit the work to be performed under the instant contract, the amount and percentage of contract costs to be shared by the petitioner, the out-of-pocket costs of facilities or equipment to be made available by the petitioner for performance of the contract work which are not charged directly or indirectly to the Government under contract, and the contractor's plans and intentions to further develop and commercialize the technology at private expense;

(3) A description of competitive technologies or other factors which would ameliorate any anticompetitive effect of granting the waiver.

(4) Identification of whether the contract pertains to work that is classified, or sensitive, i.e., unclassified but controlled pursuant to section 148 of the Atomic Energy Action of 1954, as amended (42 U.S.C. 2168) (1982), or subject to export control under Chapter 17 of the Military Critical Technology List (MCTL) contained in Department of Defense Directive 5230.25, including identification of all principal uses of the subject matter of the contract, whether inside or outside the contractor program, and an indication of whether any such uses involve classified or sensitive technologies.

(5) Identification of all DOE and DOD programs and projects in the same general technology as the contract for which the petitioner intends to be providing program planning advice or has provided program plan-

ning advice within the last three years.

(e) For identified invention requests, such requests shall include at a minimum:

(1) A brief description of the intentions of the petitioner (or its present or intended licensee) to commercialize the invention. This description should include: (i) estimated expenditures, (ii) anticipated steps, (iii) the associated time periods to bring the invention to commercialization, and (iv) a statement that petitioner (or its present or intended licensee) has the capability to carry out its stated intentions.

(2) A description of any continuing Government funding of the development of the invention (including investigation of materials or processes for use therewith), from whatever Government source, whether direct or indirect, and, to the extent known by the petitioner, any anticipated future Government funding to further develop the invention.

(3) A description of competitive technologies or other factors which would ameliorate any anticompetitive effects of granting the waiver.

(4) A statement that petitioner will reimburse the Department of Energy for any and all costs and fees incurred by the Department in the preparation and prosecution of the patent applications covering the invention that is the subject of the waiver petition.

(5) Where applicable, a statement of reasons why the petition was not timely filed in accordance with the applicable patent rights clause of the contract, or why a request for an extension of time to file the petition was not filed in a timely manner.

(6) Identification of whether the invention pertains to work that is classified, or sensitive, i.e., unclassified but controlled pursuant to section 148 of the Atomic Energy Action of 1954, as amended, (42 U.S.C. 2168) (1982), or subject to export control under Chapter 17 of the Military Critical Technology List (MCTL) contained in Department of Defense Directive 5230.25, including identification of all principal uses of the invention inside or outside the contractor program, and an indication of whether any such uses involve classified or sensitive technologies.

(7) Identification of all DOE and DOD programs and projects in the same general technology as the invention for which the petitioner intends to be providing program planning advice or has provided program planning advice within the last three years.

(8) A statement of whether a classification review of the invention disclosure, any resulting patent application(s), and/or any reports and other documents disclosing a substantial portion of the invention has been made, together with any determinations on the existence of classified or sensitive information in either the invention disclosure, the patent application(s), or reports or other documents disclosing a substantial portion of the invention; and

(9) Identification of any and all proposals, work for others activities, or other arrangements submitted by the petitioner, DOE, or a third party, of which petitioner is aware, which may involve further funding of the work on the invention at either the contractor facility where the invention arose or another facility owned by the Government.

(f) Patent Counsel will notify the petitioner promptly if the waiver request is found not to be a complete request and, in that event, will provide the petitioner with a reasonable period, not to exceed 60 days, to correct any such incompleteness. If petitioner does not respond within the allotted time period, the waiver request will be considered to be withdrawn. If petitioner responds within the allotted time period, but the submittal is still deemed incomplete or insufficient, the waiver request may be denied.

(g) For waiver requests as described in this section, waiver decisions shall be made within 150 days after the date on which a complete request for waiver of such rights, as specified herein, has been submitted by the petitioner to the DOE Patent Counsel. If the original waiver request does not result in a communication from DOE Patent Counsel indicating that the request is incomplete, the 150-day period for decision commences on the date of receipt of the waiver petition. If the original waiver request results in a communication from DOE Patent Counsel indicating that the request is incomplete, the 150-day period for decision commences on the date on which supplementary information is received by Patent Counsel sufficient to make the waiver request complete. For advance waiver requests, if petitioner is not notified that the request is incomplete, the 150-day period for decision commences on the date of receipt of the petition, or on the date on which negotiation of contract terms is completed, whichever is later.

(h) Failure of DOE to make a patent waiver decision within the prescribed 150-day period shall in no way be construed as a grant of the waiver.

[53 FR 51278, Dec. 21, 1988]

Subpart 927.4—Technical Data and Copyrights

927.400 Scope of subpart.

This subpart sets forth DOE's policy, procedures, and instructions for contract clauses with respect to the acquisition and use of technical data and copyrights in contracts or subcontracts entered into, with or for the benefit of the Government.

927.401 Definitions.

"Technical data" means for the purpose of this subpart, recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, demonstration, or engineering work or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents, or computer software (including computer programs, computer software data bases, and computer software documentation). Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical data, as used in this subpart, do not include financial reports, cost analyses, and other information incidental to contract administration.

"Proprietary data" means for the purpose of this subpart, technical data which embody trade secrets developed at private expense, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data:

(1) Are not generally known or available from other sources without obligation concerning their confidentiality;

(2) Have not been made available by the owner to others without obligation concerning their confidentiality; and

(3) Are not already available to the Government without obligation concerning their confidentiality.

"Contract data" means for the purpose of this subpart, technical data first produced in the performance of the contract, technical data which are specified to be delivered under the contract, technical data that may be called for under the Additional Technical Data Requirements clause of the contract, if any, or technical data actually delivered in connection with the contract.

"Unlimited rights" means for the purpose of this subpart, rights to use, duplicate or disclose technical data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

927.402 Acquisition and use of technical data.

927.402-1 General.

(a) The provisions herein pertain to research, development, demonstration and supply contracts. Special considerations for contracts for the operation, design, or construction of Government-owned facilities are covered by Subpart 970.27. Under DOE's broad charter to perform research, development, and demonstration work, in both nuclear and nonnuclear fields, and to meet the objectives stated in 927.402-2, DOE has extensive needs for technical data. The satisfaction of these needs and the achievement of DOE's objectives through a sound data policy are found in the balancing of the needs and equities of the Government, its contractors, and the general public.

(b) It is important to keep a clear distinction between contract requirements for the delivery of technical data on the one hand, and rights in technical data on the other. The legal rights which the Government acquires in technical data in DOE contracts (other than "facilities" contracts) are set forth in the Rights in Technical Data (long form) clause of 952.227-75. However, this clause does not obtain for the Government the delivery of any data whatsoever. Rather, known requirements for the technical data to be delivered by the contractor shall be set forth as part of the contract (e.g. in the statement of work). The Additional Technical Data Requirements clause at 952.227-73 may be used along with the clause at 952.227-75 to enable the contracting officer to require the contractor to furnish additional technical data, the requirement for which was not known at the time of contracting. There is, however, a built-in limitation on the kind of technical data which a contractor may be required to deliver under either the contract statement of work or the Additional Technical Data Requirements clause. This limitation is found in the withholding provision of paragraph (e) of the Rights in Technical Data (long form) clause of 952.227-75 which provides that the contractor need not furnish "proprietary data." It is specifically intended that the contractor may withhold "proprietary data" even though a requirement for technical data specified in the statement of work or called for pursuant to the Additional Technical Data Requirements clause would seemingly require the furnishing of proprietary data. This withholding of proprietary data is the primary means by which the contractor may protect its proprietary position.

(c) There are, however, two situations where the Government, or its representative, may need to have limited access to a contractor's proprietary data.

(1) First, paragraph (f) of the Rights in Technical Data (long form) clause gives the contracting officer's representatives the limited right to inspect at the contractor's facility the contractor's proprietary data which were withheld from delivery under paragraph (e) of the clause for the purpose of verifying that such data were properly withheld or to evaluate work performance. In carrying out the inspection, normally the contracting officer's representative is a DOE employee although he may be an employee of a DOE contractor acting under an agreement to treat in confidence the proprietary data to be inspected. However, where the contractor whose data are to be inspected demonstrates that there would be a possible conflict of interest if the inspection were made by such a contractor employee, the contracting officer's representative may be limited to a DOE employee. Paragraph (f) has a built-in exclusion from these inspection rights for "specific items of proprietary data" when they are so specified in the contract schedule. Such exclusions limit even DOE's minimum rights of evaluating contract work performance and verifying that technical data withheld by the contractor is proprietary in fact. Such exclusions should be sparingly used, and only in situations where program personnel stipulate to the fact that DOE has no need for access to the specified items to be excluded from paragraph (f), i.e., that the nondisclosure and nonaccessibility will not adversely affect the DOE program involved. It should also be noted that paragraph (f) permits exclusion of "specific items" of proprietary data and, accordingly, should not be used to exclude classes of technical data or all technical data pertaining to specific items or processes or classes of items or processes.

(2) The second situation, where the Government may have limited access to a contractor's proprietary data, is provided in optional paragraph (g) of the Rights in Technical Data (long form) clause at 952.227-75 Alternate I. When used, optional paragraph (g) provides the Government the right to require the contractor to furnish with limited rights the proprietary data previously withheld under paragraph (e). In this situation, the limited rights in proprietary data and the Govern-

ment's obligation for limited use and disclosure of such data as set forth in the Rights in Technical Data (long form) clause provides the means by which the contractor protects its proprietary position. Paragraph (g) will be used only where it is determined by DOE that for programmatic reasons there is a need for the delivery of proprietary data to the Government. Where proprietary data is to be delivered under paragraph (g) and subparagraph (a) or (b) of the limited rights legend is to be applied to the data, the contractor may, if he can show the possibility of a conflict of interest regarding disclosure of such data to other contractors, limit or modify subparagraph (a) or (b) as set forth in 927.402-3(e)(2), to exclude or include certain contractors.

(d) The contractor licensing provisions of optional paragraph (h) at 952.227-75 Alternate II of the Rights in Technical Data (long form) clause enable DOE to require limited licenses in proprietary contract data to be granted to the Government and responsible parties in certain circumstances. Such a license may parallel or supplement the license obtained in background patents under the provisions of paragraph (k) of the Patent Rights clause of 41 CFR 9-9.107-5(a). Paragraph (h) is normally to be included in contracts for research, development or demonstration where it is deemed by DOE that the limited license afforded therein is necessary to ensure widespread commercial use or practical utilization of a subject of the contract. As explained in 927.402-3(e)(3), paragraph (h) provides that upon request by DOE, the contractor will grant to the Government and responsible third parties a license in proprietary data only where such data in the form of results obtained by its use, i.e., essential equipment, articles, products, and the like which were the subject of the contract, are not otherwise available, or cannot be made available in a reasonable time as set forth in paragraph (h).

(e)(1) It is the responsibility of prime contractors and higher tier subcontractors, in meeting their obligations with respect to contract data, to obtain from their subcontractors the rights in, access to, and delivery of such data on behalf of the Government. Accordingly, subject to the policy set forth in these regulations, and subject to the approval of the contracting officer where required, selection of appropriate technical data provisions for subcontracts is the responsibility of the prime contractor or higher-tier subcontractor. In many but not all instances, inclusion in a subcontract of the Rights in Technical Data (long form) clause of 952.227-75 will suffice to obtain for the benefit of the Government the rights in and, if appropriate, access to technical data. Access by DOE to technical data, i.e., the inspection rights afforded in paragraph (f) of the Rights in Technical Data (long form) clause at 952.227-75 normally should be obtained only in first-tier subcontracts having as a purpose the conduct of research, development, or demonstration work or the furnishing of supplies for which there are substantial technical data requirements as reflected in the prime contract. If a subcontractor refuses to accept technical data provisions affording rights in and access to technical data on behalf of the Government, the contractor shall so inform the Contracting Officer in writing and not proceed with the subcontract without written authorization of the Contracting Officer. In prime contracts (or higher-tier subcontracts) which contain the Additional Technical Data Requirements clause, it is the further responsibility of the contractor (or higher-tier subcontractor) to determine whether inclusion of such clause in a subcontract is required to satisfy technical data requirements of the prime contract (or higher-tier subcontract).

(2) As is the case for DOE in its determination of technical data requirements, the Additional Technical Data at 952.227-73 Requirements clause should not be used at any subcontracting tier where the technical data requirements are fully known, and normally the clause will be used only in subcontracts having as a purpose the conduct of research, development, or demonstration. Prime contractors and higher-tier subcontractors shall not use their power to award subcontracts

as economic leverage to inequitably acquire rights in the subcontractor's proprietary data for their private use, and they shall not acquire rights on behalf of the Government to proprietary data for standard commercial items unless required by the prime contract.

(f) Related to the acquisition and use of technical data are the contractor's rights in contract data as well as technical data furnished to the contractor by DOE or its contractors. These rights are set forth in paragraph (b)(2) of each Rights in Technical Data clause and provide that the contractor may, subject to patent, security and other provisions of the contract, use for its private purposes contract data it first produces in the performance of the contract, provided that the contractor has met its data requirements (e.g., delivery of data in form of progress or status reports specified to be delivered) as of the date of the private use of such data. It is not necessary that a final report be submitted in order to privately use data if all required progress and interim reports and other technical data then due have been delivered. Paragraph (b)(2) further provides that technical or other data received by the contractor in the performance of the contract must be held in confidence by the contractor in accordance with restrictions accompanying the data.

(g) An additional clause described further at 927.402-3(f), the text of which is found at 952.227-76 entitled Rights in Data—Special Works, is to be used in place of or in addition to the Rights in Technical Data (long form) clause in contracts where a purpose of the contract is the production of copyrightable material, a substantial portion of which is to be first produced in the performance of the contract, such as motion pictures, television recordings, books, histories, etc. Where, during contract negotiations, it may be determined to purchase, i.e., "specifically acquire," unlimited rights in technical data, or to lease or obtain a license therein, or to obtain rights in existing data, an appropriate clause therefor should be obtained from patent counsel. In situations where technical data including computer software are to be leased or licensed, the terms of any agreement restricting the Government's rights will be included in the contract as either a special clause or an agreement annexed thereto. Another clause, the Rights in Technical Data (short form) clause further described at 927.402-3(g), the text of which is found at 952.227-77, is provided for use in research contracts with educational institutions and consultants. Such contracts may, for example, include those for conducting symposia, training, or education, or other contracts not involving possible use of proprietary data.

(h) In contracts involving access to certain categories of DOE-owned restricted data, as set forth in 10 CFR Part 725, DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including its related data and technology. Accordingly, in contracts where access to such restricted data is to be provided to contractors, the following parenthetical phrase shall be inserted after "contract data" in paragraph (b)(2)(ii) of the clause at 952.227-75, after "technical data" in paragraph (b)(2) of the clause at 952.227-77, or after "technical data" in paragraph (b)(2)(ii) of the clause at 952.227-78 as appropriate: "(except Restricted Data in category C-24, 10 CFR Part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology)." In addition, there are other types of contract situations (e.g., no cost contracts for studies or evaluation) wherein the contractor is given access to restricted data. In such contract situations, limitations on the use of such data may be appropriate.

927.402-2 Policy.

The technical data policy is directed toward achieving the following objectives:

(a) Making the benefits of the energy research, development and demonstration programs of DOE widely available to the public in the shortest practicable time;

(b) Promoting the commercial utilization of the technology developed under DOE programs;

(c) Encouraging participation by private persons in DOE energy research, development, and demonstration programs; and

(d) Fostering competition and preventing undue market concentration or the creation or maintenance of other situations inconsistent with the antitrust laws.

927.402-3 Procedures (supply, research, development, or demonstration contracts).

(a) *Known requirements for technical data.* Technical data requirements are determined in relation to the intended use of the data which in turn depends upon the intended use of the contract end item. In many contracts for research, the end item may often be a technical report or series of such reports, while in contracts beyond research, the subject of the contract may be a feasibility model, an engineering or advance development model, or a prototype. The extent to which required technical data may be needed often depends on the level of maturity of design and perfection of the end item, and for a demonstration plant or prototype, may include data pertaining to performance, operational and environmental testing, repair, maintenance, operation, quality assurance, detailed design, logistics, training, etc. Known technical data requirements shall be programmatically ascertained prior to contracting and shall be included in requests for proposals or disclosed during contract negotiations for incorporation as data requirements in the contract statement of work.

(b) *Additional requirements for technical data.* In contracts for research, development, or demonstration, it is not normally possible or appropriate for the Government to ascertain all actual needs for technical data in advance of contracting. Accordingly, the Additional Technical Data Requirements clause at 952.227-73, shall normally be used in such contracts (and, if appropriate, in subcontracts) to enable the ordering of technical data as the actual need and requirement therefor becomes known during the course of the contract. If all technical data requirements are known in advance of contracting and are set forth in the contract statement of work, this clause need not be used. The Additional Technical Data Requirements clause should not normally be used in supply contracts because the required technical data therefor are ordinarily known in advance and thus are specified in the contract statement of work or specification. When the Additional Technical Data Requirements clause is used, the Rights in Technical Data-Long Form clause at 952.227-75 shall also be used.

(c) *Clause text.* The text of the Additional Technical Data Requirements clause is found at 952.227-73.

(d) *Proposals.* (1) The policy and procedures for treatment of proposal information are set forth in FAR 15.413 for solicited proposals, in FAR 15.509 for unsolicited proposals, and 927.70.

(2) Solicited proposals are to be handled in accordance with the procedures of FAR 15.413-2. Evaluation of such proposals outside the Government is authorized in accordance with the procedures of FAR 15.413-2(f) and paragraph (d)(4) below. In order to assure that solicited proposals are properly handled, the handling notice of FAR 15.413-2(e) shall be affixed to a cover sheet attached to each proposal upon receipt by DOE. Use of the notice neither alters any obligation of the Government, nor diminishes any rights in the Government to use or disclose the information.

(3) Unsolicited proposals are to be handled in accordance with FAR 15.509. Outside evaluations of such proposals are authorized in accordance with the procedures of 927.7000.

(4) It is DOE policy to have proposals evaluated by the most competent persons available in Government. In addition, DOE may meet its evaluation needs by having proposals reviewed by evaluators and contractor organizations operating or managing government-owned facilities. Where it is determined to evaluate a proposal outside the Government, such as by consultants, grantees and contractors including those who operate or manage

Government-owned facilities, the agreement of 927.7000 or an equivalent arrangement for the treatment of the proposal shall be obtained from the outside evaluator before DOE furnishes a copy of the proposal to such person. In addition, care should be taken that the required handling notice is affixed to a cover sheet attached to the proposal before it is disclosed to the evaluator.

(5) Should a contract be awarded based on a proposal, it is DOE policy, in consideration of the award, to obtain unlimited rights for the Government in the technical data contained in the proposal unless the prospective contractor marks those portions of the technical information which it asserts as "proprietary data", or specifies those portions of such technical data which are not directly related to or will not be utilized in the work to be funded under the contract. "Proprietary data" is defined in 927.401(b). A proposer who receives a contract award shall mark the data identified as proprietary by specifying the appropriate page numbers to be inserted in the Rights to Proposal Data clause of 952.227-82, which clause shall be inserted in the contract. Subject to the concurrence of the contracting officer, information unrelated to the contract may be deleted from the proposal by the contractor. The responsibility, however, of identifying technical data as proprietary or deleting it as unrelated, rests with the prospective contractor.

(e) *Rights in technical data.* (1) The Rights in Technical Data (long form) clause set forth at 952.227-75 shall be used in all contracts having as a purpose the conduct of research, development, or demonstration, or in contracts for supplies, or in any other contract where technical data are expected to be first produced under the contract, where technical data are specified to be delivered in the contract, or where the contract contains the Additional Technical Data Requirements clause. Accordingly, all such contracts shall contain the Rights in Technical Data (long form) clause at 927.227-75, except as noted in 970.2702 and 927.402-3 (f) and (g) and except contracts for standard commercial off-the-shelf supplies where technical data such as operating or repair manuals are routinely furnished with the supplies.

(2) *Optional paragraph-Limited Rights in Proprietary Data.* In research, development, or demonstration contracts, and supply contracts where it is determined that delivery of proprietary data is necessary with limited rights in the Government, the Rights in Technical Data (long form) clause at 952.227-75 shall be supplemented by the additional paragraph (g) set forth at Alternate I to the clause. It should be noted that this paragraph does not entitle the contractor to place a limited rights legend on any technical data furnished to the Government under paragraph (g) unless the contracting officer requests in writing delivery of identified technical data previously withheld under paragraph (e) of the Rights in Technical Data clause. Paragraph (g) provides that proprietary data may be specified in the contract as being excluded from the delivery requirements of paragraph (e). Alternatively, the limited rights legend specified in Alternate I may be made applicable to only those classes of proprietary data determined as being necessary for delivery with limited rights. In addition, when furnishing proprietary data with the limited rights legend, subparagraphs (a), (b) and (c) thereunder may be modified as follows. When proprietary data is to be furnished only for evaluation, subparagraph (a) of the limited rights legend shall be used, and subparagraphs (b) and (c), if otherwise inapplicable, may be deleted. When there is a programmatic requirements that proprietary data be disclosed to other DOE contractors only for information or use in connection with work performed under their contracts, subparagraph (b) of the limited rights legend shall be used, and subparagraphs (a) and (c) may be deleted if otherwise inapplicable. In either of the foregoing examples, the contractor may, if it can show the possibility of a conflict of interest because of disclosure of such data to certain contractors or evaluators, exclude such contractors or evaluators from subparagraphs (a) or (b). If the data is required solely for emer-

gency repair or overhaul, subparagraph (c) of the limited rights legend shall be retained, and subparagraphs (a) and (b) may be deleted, unless otherwise applicable. In the event it is determined that all of the subparagraphs (a), (b) and (c) of the limited rights legend are to be deleted, the word "none" shall be inserted in the legend after the colon(:).

(3) *Optional paragraph-Contractor Licensing.* In many contracting situations the achievement of DOE's objectives would be frustrated if the Government, at the time of contracting, did not obtain on behalf of responsible third parties and itself limited license rights in and to proprietary contract data. Where, for example, the contractor is required to license background patents, consideration should be given to securing co-extensive license rights to the Government and responsible third parties at reasonable royalties, and under appropriate restrictions, for contract data which are proprietary data in order to practice the technology which is a subject of the contract. When such a license right is deemed necessary, the Rights in Technical Data (long form) clause at 952.227-75 should be supplemented by the addition of paragraph (h) at 952.227-75 Alternate II. Paragraph (h) will normally be sufficient to cover proprietary contract data for items and processes that were used in the contract and are necessary in order to insure widespread commercial use of a subject of the contract. The expression "subject of the contract" is intended to limit the licensing required in paragraph (h) below to the fields of technology specifically contemplated in the contract effort and may be replaced by a more specific statement of the fields of technology intended to be covered in the manner described in 41 CFR 9-9.107-5(b)(9) pertaining to "Background Patents." Where, however, proprietary contract data cover the main purpose or basic technology of the research, development, or demonstration effort of the contract, rather than subcomponents, products or processes which are ancillary to the contract effort, the limitations set forth in subparagraphs (h) (1) through (4) should be modified or deleted. Paragraph (h) further provides that technical data may be specified in the contract as being excluded from or not subject to the licensing requirements thereof. This exclusion can be implemented by limiting the applicability of the provisions of paragraph (h) to only those classes or categories of proprietary data determined as being essential for licensing. Although contractor licensing may be required under paragraph (h), the final resolution of questions regarding the scope of such licenses, the terms thereof, including provions for confidentiality and reasonable royalties, is then left to the negotiation of the parties with resolution of the issues being made, if necessary, by a court of competent jurisdiction.

(f) *Rights in Data—Special Works.* (1) The clause set forth in 952.227-76 shall be used in all contracts where the principal purpose or a task of the contract is the production of copyrightable works, even through such works may incorporate uncopyrighted material or material previously copyrighted by the contractor or others. Such contracts include those:

(i) Primarily for production of motion picture or television recordings or scripts, musical compositions or arrangements, sound tracks or recordings, translations, adaptations, and the like;

(ii) For books, compilations, surveys, histories, or technology information pamphlets;

(iii) For works pertaining to management studies, support services, training, career guidance, or similar functions of DOE; and

(iv) For works pertaining to guidance or instruction of DOE officials or employees in the discharge of official duties.

(2) The Rights in Data—Special Works clause at 952.227-76 should be modified with the assistance of Patent Counsel where the contract calls for the editing, translation, addition, or other modification of the subject matter of an existing work.

(g) *Rights in Technical Data (short form).* The clause set forth in 952.227-77 may be used in contracts for basic research including grants, special research contracts with educational institutions, contracts with consultants, contracts for symposia, or for the conduct of training and educational programs, and in other contracts of a similar nature. This clause shall not be used in any contract where proprietary information of the contractor may be utilized in the performance of work under the contract; in such instances the Additional Technical Date Requirements clause of 952.227-73 and the Rights in Technical Data (long form) clause of 952.227-75 shall be used. The short form clause of this section shall not be used in situations involving long-term consultancy arrangements for work in DOE programs providing opportunities for specialized work experience at DOE-owned facilities for scientific, engineering, and other employees of private firms and institutions engaged in civilian applications of atomic energy.

[49 FR 12004, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984]

927.403 Negotiations and deviations.

Contracting officers shall contact the Patent Counsel assisting their contracting activity, or the Assistant General Counsel for Patents, for assistance to the contracting officer in selecting, negotiating, or approving appropriate data and copyright clauses in accordance with the procedures as set forth in 927.402 and 970.27. In particular, advice of Patent Counsel should be obtained regarding the appropriateness or modification of optional paragraphs (g) and (h) of the Rights in Technical Data (long form) clause, the exclusion of specific items of proprietary data from paragraph (f) in said clause, and the exclusion of the Additional Technical Data Requirements clause of 952.227-73.

Subpart 927.70—Disclosure of Proposal Information

927.7000 Disclosure outside Government.

(a) It is DOE policy to have proposals evaluated by the most competent persons available in the Goverment. In addition, DOE may meet its evaluation needs by having proposals reviewed by evaluators and contractor organizations operating or managing government-owned facilities. Outside evaluations may be made provided the requirements in (b) and (c) below are met. A decision to employ outside evaluators shall take into consideration requirements for avoidance of organizational conflicts of interest set forth in 909.5 and the competitive relationship, if any, between the proposer and the outside evaluator.

(b) Decisions to evaluate proposals outside the government shall be made only by the Source Selection Official with the concurrence of the Procurement Executive, Headquarters, for all source evaluation board acquisitions, or by the Senior Program Offical or designee with the concurrence of the HCA or his designee for other acquisitions. If the proposal under consideration expressly indicates that only Government evaluation is authorized and evaluation outside the Government is neverthless desired, the proposer shall be advised that DOE may be unable to give full consideration to the proposal unless the proposer consents in writing to having the proposal evaluated outside the Government.

(c) Where it is determined to evaluate a proposal outside the Government, such as by consultants, grantees or contractors including those who grant or manage Government-owned facilities the following agreement or an equivalent arrangement for the treatment of the proposal shall be obtained from the outside evaluator before DOE furnishes a copy of the proposal to such person. In addition, care should be taken that the handling notice required by 927.7003 is affixed to a cover sheet attached to the proposal before it is disclosed to the evaluator.

AGREEMENT

Conditions for Evaluating Proposal

Whenever DOE furnishes a proposal for evaluation, I the recipient agree to use the information contained in the proposal only for DOE evaluation purposes and to treat the information obtained in confidence. This requirement does not apply to information obtained from any source, including the proposer, without restriction. Any notice or restriction placed on the proposal by either DOE or the originator of the proposal shall be conspicuously affixed to any reproduction or abstract thereof and its provisions strictly complied with. Upon completion of the evaluation, it is agreed all copies of the proposal and abstracts, if any, shall be returned to the DOE office which initially furnished the proposal for evaluation. Unless authorized by the conracting officer, it is agreed the recipient shall not contact the originator of the proposal concerning any aspect of its contents.

Recipient: ——————————

Date: ——————————

927.7001 Proposal information.

Information contained in proposals will be used only for evaluation purposes except to the extent such information is generally available to the public, is already the property of the Government, or the Government already has unrestricted use rights, or is or has been made available to the Government from any source, including the proposer or offeror, without restriction. The term "proposal," as used in this section, includes responses to program opportunity notices (PONs), program research and development announcements (PRDAs) and solicitations of a similar nature, in addition to requests for proposals (RFPs) and unsolicited proposals. As a practical matter, DOE cannot assume any responsibility for disclosure or use of any such information unless it is identified by the proposer or offeror in accordance with this section. Unless a solicitation specifies otherwise, DOE will not refuse to consider a solicited proposal or an unsolicited proposal merely because the proposal is restrictively marked.

927.7002 Treatment of proposal information.

(a) A proposal may include technical data and other data, including trade secrets and/or privileged or confidential commercial or financial information which the offeror does not want disclosed to the public or used by the Government for any purpose other than proposal evaluation. To protect such data the offeror should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the proposal with the notice set forth at FAR 52.215-12, as prescribed at FAR 15.407(c)(8) for solicited proposals or FAR 15.509 for unsolicited proposals. Solicitation documents shall include instructions to proposers to mark their proposals in the prescribed manner.

(b) A reference to that notice on a proposal cover sheet shall be placed on each page to which the notice applies. Data, or abstracts of data, marked with that notice will be retained in confidence and used by the DOE or its designated representative(s) including Government contractors and consultants, as set forth in paragraph (c) of this section solely for the purpose of evaluating the proposal. The data so marked will not otherwise be disclosed or used without the proposer's prior written permission except to the extent provided in any resulting contract, or to the extent required by law. Offerors should be made aware of the provisions of paragraph (c) of this section if they desire to modify the notice at FAR 52.215-12 or otherwise seek to limit the evaluation to the Government only. The restriction contained in the notice does not limit the Government's right to use or disclose any data contained in the proposal if it is obtainable from any source, including the offeror, without restriction. Although it is the policy of the DOE to treat all proposals as confidential, the Government assumes no liability for disclosure or use of unmarked data and may use or disclose such data for any purpose. See FAR 15.1001(b) regarding disclosure to other offerors.

(c) Should a contract be awarded based on a proposal, it is DOE policy, in consideration of the award, to obtain unlimited rights for the Government in the technical data contained in the proposal unless the prospective contractor marks those portions of the technical information which he asserts "proprietary data," or specifies those portions of such technical data which are not directly related to or will not be utilized in the work to be funded under the contract. "Proprietary data" is defined in 927.401. An offeror who receives a contract award shall mark the data identified as proprietary by specifying the appropriate page numbers to be inserted in the Rights to Proposal Data clause of 952.227-82, which clause shall be inserted in the contract. Subject to the concurrence of the contracting officer, information unrelated to the contract may be deleted from the proposal by the contractor. The responsibility, however, of identifying technical data as proprietary or deleting it as unrelated, rests with the prospective contractor.

(d) The clause at 952.227-82 shall be included in any contract which resulted from a proposal that was the basis of negotiation and award of the contract. This clause is intended to apply only to technical data and not to other data such as privileged or confidential commercial or financial information.

927.7003 Handling notice.

In order that proposals may be handled in confidence consistent with the policies set forth in this section and pursuant to 927.402-3(d)(2), the notice at FAR 15.413-2(e) for solicited proposals and FAR 15.509(d) for unsolicited proposals shall be affixed to a cover sheet attached to each proposal upon receipt by DOE. Use of the notice neither alters any obligation of the Government, nor diminishes any rights in the Government to use or disclose data or information.

927.7004 Identification of proprietary data in proposals.

927.7004-1 Solicited proposals.

Even though the statement of work contained in a solicitation sets forth the known requirements for technical data, i.e., technical data which will be specified to be delivered, there is no assurance that the contractor will deliver all of this data because paragraph (e) of the Rights in Technical Data (long form) clause at 952.227-75 permits the contractor to withhold proprietary data from delivery. In order to ascertain the technical data the proposer intends to withhold as proprietary data, and as an aid in determining whether to include the provision for limited rights in proprietary data set forth in optional paragraph (g) of the Rights in Technical Data (long form) clause, the provision set forth in 952.227-83 shall be included in the solicitation. This provision explains that solicitations will include DOE's known requirements for technical data, and that the proposer must submit a list identifying to the best of its knowledge which of this data will be withheld as proprietary data, or state that no technical data will be withheld. The submission of such a list does not constitute a stipulation or determination by the Government that the data identified therein are in fact proprietary. In addition, the provision to be included in the solicitation refers to the Additional Technical Data Requirements clause at 952.227-73, as being included in the proposed contract where, due to programmatic considerations, it is contemplated that all of the requirements for technical data will not be known at the time of contracting. When a proposer specifically identifies the proprietary data to be withheld, the contracting officer shall determine as advised by the appropriate program manager, whether:

(a) the Government needs limited rights in the proprietary data, in which case the optional paragraph (g) will be included in the Rights in Technical Data (long form) clause;

(b) the Government needs to require the contractor to license proprietary data to the Government and responsible third parties, in which case optional paragraph (h) will be included in the Rights in Technical Data (long form) clause; and

(c) the Government needs unlimited rights in the proprietary data, in which case negotiations may be held to purchase or obtain a suitable license to the proprietary data.

927.7004-2 Solicitations.

The provision at 952.227-83 shall normally be included in solicitations which may result in contracts calling for research, development, or demonstration work or solicitations for supplies in which delivery of required technical data is contemplated.

927.7004-3 Unsolicited proposals.

The contracting officer, during contract negotiations, shall identify technical data which will be required to be furnished under the contract. The proposer shall be required to submit a list identifying, to the best of his knowledge, which of this data will be withheld as proprietary under paragraph (e) of the Rights in Technical Data (long form) clause, or to state that no technical data will be withheld. The contracting officer shall then make the determinations, in the same manner as set forth in 927.7004-1 for solicited proposals, pertaining to the proprietary data identified to be withheld.

927.7005 Required notice of right to request patent waiver.

Offerors are to be provided with notice of the right to request, in advance of or within 30 days after the effective date of contracting, a waiver of all or any part of the rights of the United States with respect to subject inventions. In no event will the fact that an offeror has requested such a waiver be a consideration in the evaluation of his offer or the determination of his acceptability. Accordingly, the notice at 952.227-84 shall be given to all prospective contractors and shall be inserted in all solicitations which may result in contracts calling for research, development, or demonstration work.

PART 928—BONDS AND INSURANCE

Subpart 928.1—Bonds

Sec.

928.101-1 Policy on use.
928.101-70 Review of bid bonds for construction.
928.102-70 Review of performance and payment bonds for construction.
928.103-2 Performance bonds.
928.103-3 Payment bonds.
928.103-70 Review of performance and payment bonds for other than construction.
928.170 Fidelity bonds.

Subpart 928.2—Sureties

928.202-1 Corporate sureties.
928.202-70 Partnerships as sureties.
928.202-71 Substitution or replacement of a surety.

Subpart 928.3—Insurance

928.301 Policy.
928.370 Service-type insurance policies.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 12010, Mar. 28, 1984, unless otherwise noted.

Subpart 928.1—Bonds

928.101-1 Policy on use.

(a) In addition to the restriction on use of bid guarantees in FAR 28.101-1(a), a bid guarantee may be required only for fixed price or unit price contracts entered into as a result of sealed bidding. They may not be required for negotiated contracts.

[50 FR 12185, Mar. 27, 1985]

928.101-70 Review of bid bonds for construction.

Prior to award of a contract, the contracting officer shall obtain a review from Counsel of the bid bond furnished with the successful bid as to legal form and sufficiency and as to acceptability of the surety. Prior to award of a subcontract, the contracting officer shall review the bid bond furnished with the successful bid as to legal form and sufficiency and as to acceptability of the surety and adequacy of the bond.

928.102-70 Review of performance and payment bonds for construction.

Prior to the award of a contract for construction the contracting officer shall obtain review of performance and payment bonds as to legal form and sufficiency, acceptability of the surety, and adequacy of the bond. A performance or payment bond, other than an annual bond, shall not antedate the contract to which it pertains.

928.103-2 Performance bonds.

Situations in addition to those listed in FAR 28.103-2, which may warrant requiring a performance bond for other than construction contracts are:

(a) Where doubt exists as to the financial or technical ability of all possible suppliers;

(b) Where the contractor's talent is overly concentrated in a few key personnel whose illness or departure could seriously impair the contractor's ability to perform the proposed work;

(c) Where other commitments of the contractor might delay performance;

(d) Where performance of the proposed work might disrupt other operations of the contractor and impair its overall efficiency; and

(e) Where the item being manufactured is a component for another article and is required by a particular date in order to avoid delay in delivery of the end product.

928.103-3 Payment bonds.

(a) A determination that is in the best interest of the Government to require payment bonds in connection with other than construction contracts may be made by the contracting officer on individual acquisitions. Such approval is subject to the approval of the Head of the Contracting Activity. In the case of either advertised or negotiated acquisitions, whenever the contracting officer has reason to believe that work under a proposed contract might be delayed because of the concern of subcontractors or suppliers over the credit standing of a potential prime contractor, the contracting officer should consider requiring a payment bond.

928.103-70 Review of performance and payment bonds for other than construction.

Prior to the award of a contract for other than construction the contracting officer shall obtain review of performance and payment bonds as to legal form and sufficiency, acceptability of the surety, and adequacy of the bond. A performance or payment bond, other than an annual bond, shall not antedate the contract to which it pertains.

928.170 Fidelity bonds.

Fidelity bonds shall not be required in connection with fixed-price contracts. They may be required, however, in connection with cost-reimbursement contracts for supplies, or construction, where it is determined that a fidelity bond is necessary for the protection of the Government or the contractor, or when it is considered desirable to obtain the investigative and claim services of the surety company.

Subpart 928.2—Sureties

928.202-1 Corporate sureties.

Each corporate surety, may, by setting forth the limit of its liability in the bond as a definite and specified sum, limit such liability. The co-sureties must, however, bind themselves "jointly and severally" for the purpose of allowing a joint action or actions against any or all of them.

928.202-70 Partnerships as sureties.

A partnership or other unincorporated association, as such, shall not be accepted as a surety. The individual members of the partnership or association may, of course, qualify as sureties, provided they meet the requirements set forth in FAR 28.202-2. Individual members of a partnership or association shall not, however, be acceptable as sureties on bonds under which the partnership or association, or any co-partner or member thereof, is the principal obligor.

928.202-71 Substitution or replacement of a surety.

In case of financial inadequacy, failure, or other disqualifying cause on the part of a surety under a bond, the contracting officer shall require the substitution of a new surety satisfactory to the contracting officer.

Subpart 928.3—Insurance

928.301 Policy.

The DOE policies and procedures for indemnification of DOE contractors are set forth in FAR Part 50 and 950.

928.370 Service-type insurance policies.

(a) Service-type insurance policies are cost-reimbursement type contracts or subcontracts in which the insurer provides claim and loss adjustment services on a cost reimbursement basis, which satisfies state and Federal insurance requirements.

(b) Service-type insurance policies may be used with contracting officer approval, when one or more of the following conditions are present:

(1) Pure risk commercial insurance is not available or, if available, cost is not considered reasonable;

(2) Inherent risks in the contract are new and a part of the process of commercialization;

(3) The service-type insurance is needed to implement jointly funded projects; or

(4) The service-type insurance arrangement is considered in the Government's best interest.

PART 931—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 931.1—Applicability

Sec.
931.102 Fixed-price contracts.

Subpart 931.2—Contracts With Commercial Organizations

931.205-18 Independent research and development and bid and proposal costs.
931.205-32 Precontract costs.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

Subpart 931.1—Applicability

931.102 Fixed-price contracts.

The intent of the first sentence of FAR 31.102 is that applicable subparts of FAR Part 31 shall be used by the Government in (a) pricing fixed-price prime contracts and modifications, (b) evaluating the reasonableness of a prime contractor's (or prospective prime contractor's) proposed subcontract (or subcontract modification) prices, and (c) determining the allowability of contractor payments to subcontractors in accordance with the provisions of FAR 31.204(b).

[49 FR 12011, Mar. 28, 1984]

Subpart 931.2—Contracts With Commercial Organizations

931.205-18 Independent research and development and bid and proposal costs.

(c)(3) In determining the amount of cost recoverable under DOE contracts the maximum total amount of annual IR&D costs recoverable under all DOE contracts with a business unit or segment shall not exceed (i) those contracts' allocable share of the business unit's (or segment's) total allocable IR&D amounts (as established in accordance with paragraphs FAR 31.205-18(c)(1) and (2)), or (ii) the total cost of the business unit's (or segment's) annual IR&D activities determined to have potential benefit or relationship to the DOE program, whichever is less. The maximum total amount of B&P cost which is recoverable under DOE contracts with a business unit (or segment) shall be those contracts' share of the allocable B&P expense computed in accordance with FAR 31.205-18(c)(1) and (2).

(4) For purposes of 931.205-18(c)(3), the term "DOE program" encompasses the DOE total mission and its objectives. However, IR&D costs that exceed the benefit threshold at one business unit or segment of a business organization cannot be used to offset IR&D costs that are less than the benefit threshold of another segment or business unit.

[49 FR 12011, Mar. 28, 1984]

931.205-32 Precontract costs.

(a) To the extent practical, known expenditures of precontract costs under DOE contracts should be governed by establishing advance understandings as contemplated by FAR 31.109. Contracts that include authorized precontract costs shall include the "Date of Incurrence of Cost" clause specified at 952.231-70.

(b) The following limitations apply to establishment of advance understandings relative to precontract costs:

(1) Precontract cost authorizations shall not be used to cover a period in excess of 15 days, unless a longer period is approved by the HCA based upon a written finding that such an allowance is reasonable, and shall not be extended or renewed. A copy of the findings shall be forwarded to the Procurement Executive at the time of approval. If prolonged coverage is necessary, a letter contract shall be issued.

(2) All precontract cost authorizations shall be reviewed and approved at a management level above the contracting officer.

(3) Retroactive precontract cost authorization and the predating of contractual agreements shall not be used.

(4) Precontract cost authorizations shall not authorize the delivery or fur-

nishing of any goods or services from a contractor until after the contract is executed.

[49 FR 12011, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984]

PART 932—CONTRACT FINANCING

Subpart 932.1—General

Sec.

932.102 Description of contract financing methods.

Subpart 932.3—Loan Guarantees for Defense Production

932.304-2 Certificate of eligibility.

Subpart 932.4—Advance Payments

932.402 General.
932.407 Interest.

Subpart 932.5—Progress Payments Based on Costs

932.501-2 Unusual progress payments.

Subpart 932.6—Contract Debts

932.605 Responsibilities and cooperation among Government officials.

Subpart 932.7—Contract Funding

932.703-1 General.

Subpart 932.8—Assignment of Claims

932.802 Conditions.
932.803 Policies.
932.805 Procedure.

Subpart 932.9—Prompt Payment

932.908 Contract clause.
932.970 Implementing DOE policies and procedures.

Subpart 932.70—DOE Loan Guarantee Authority

932.7000 Scope of subpart.
932.7001 Definitions.
932.7002 Authority.
932.7003 Policies.
932.7004 Procedures.
932.7004-1 Guaranteed loans for civilian programs.
932.7004-2 Criteria.
932.7004-3 Eligibility.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 12011, Mar. 28, 1984, unless otherwise noted.

Subpart 932.1—General

932.102 Description of contract financing methods.

(e)(2) Progress payments based on a percentage or stage of completion are authorized for use as a payment method under DOE contracts or subcontracts for construction, alteration or repair, and shipbuilding and conversion. For all other contracts, progress payment provisions shall be based on costs, as provided in FAR Subpart 32.5, and Subpart 932.5 of this chapter, except that progress payments based on a percentage or stage of completion may be authorized by the Head of the Contracting Activity when a determination is made that progress payments based on costs cannot be practically employed and that there are adequate safeguards provided for the administration of progress payments based on a percentage or stage of completion.

Subpart 932.3—Loan Guarantees for Defense Production

932.304-2 Certificate of eligibility.

(h) Guaranteed loan applications shall be authorized and transmitted to the Federal Reserve Bank only by the Secretary or designee specified for that purpose.

Subpart 932.4—Advance Payments

932.402 General.

(e)(1) The Head of the Contracting Activity or designee shall have the responsibility and authority for making findings and determinations, and for approval of contract terms concerning advance payments.

(2) Before authorizing any advance payment arrangements, the approving official shall obtain the advice, and other inputs of the servicing finance office.

932.407 Interest.

(d)(4) Advance payments may be made without interest under cost-reimbursement contracts for construction or engineering services.

Subpart 932.5—Progress Payments Based on Costs

932.501-2 Unusual progress payments.

(a)(3) The Head of the Contracting Activity shall forward all requests which are considered favorable, with supporting information, to the Procurement Executive, who, after coordination with the Controller, will approve or deny the request.

(d) Requests for unusual progress payments will not be considered as a handicap or adverse factor in the award of a contract; provided the bid or proposal is not conditioned on approval of such request.

Subpart 932.6—Contract Debts

932.605 Responsibilities and cooperation among Government officials.

(b) The DOE contracting officer has primary responsibility for determining the amount of contract debt and notifying the cognizant finance office of such debt due the Government. The servicing DOE finance office making payments under the contract has primary responsibility for debt collection.

Subpart 932.7—Contract Funding

932.703-1 General.

(a) The contracting officer shall, prior to contract award and obligation of funds, ensure sufficient funds are available to cover the maximum amount of Government liability being created under a fully funded contract; e.g., the ceiling price under a fixed-price incentive or redeterminable contract.

(b) For incrementally funded contracts the contracting officer shall limit the Government's liability to available funds and only require a contractor to provide;

(1) The property or services for which funds are available under a fixed price arrangement; or

(2) The intended increment of work and a proportionate amount of fee under a cost-reimbursement contract.

Subpart 932.8—Assignment of Claims

932.802 Conditions.

(d)(1) This paragraph covers all unpaid amounts payable under the contract except that partial assignments may be permitted when primarily for the benefit of the Government.

932.803 Policies.

(d) In the case of prime contracts, when it has been determined that the financing of contracts will be facilitated in the interest of DOE programs, it is the policy of DOE that such contracts provide, or be amended without consideration (see Assignment of Claims Act of 1940) to provide, in conformance with FAR 32.804, that payments to be made to an assignee shall not be subject to reduction or setoff. In the case of subcontracts, when loans are made for the purpose of financing performance of subcontracts under DOE prime contracts, financing institutions or the Government as guarantor in those instances in which such loans are guaranteed should not be required to incur risks of loss by reason of possible diversion of assigned subcontracts proceeds for payment of other claims of the prime contractor against the borrower, otherwise unrelated to the assigned subcontracts. The Head of the Contracting Activity shall require the adoption of these policies and practices by DOE prime contractors with respect to DOE subcontract work. The Head of the Contracting Activity should inform the Controller of each DOE contractor who is unwilling to adopt policies consistent with this paragraph and the reasons given in support of the contractor's position.

932.805 Procedure.

(f) For classified contracts, the assignee should ordinarily be furnished, upon request, with the following information, as applicable, in lieu of a copy of the contract:

(1) Name and address of the DOE prime contractor;

(2) Prime contract number and date;

(3) Name, address, and phone number of responsible official in the

(i) DOE office receiving the material or service; and

(ii) DOE finance office making payments;

(4) Subcontract number or purchase order number;

(5) Date of the subcontract or purchase order;

(6) Date on which prime contract, subcontract, or purchase order is to be completed;

(7) Total amount of the subcontract or purchase order;

(8) Dollar amount remaining to be delivered on prime contract, subcontract, or purchase order; and

(9) A statement as to the assignability of the prime contract, subcontract, or purchase order.

Subpart 932.9—Prompt Payment

932.908 Contract clause.

(c) The contracting officer shall incorporate paragraph (c), *Electronic Funds Transfer*, promulgated as Alternate II at FAR 52.232-25, in solicitations and contracts containing the basic Prompt Payment clause or its Alternate I as prescribed at FAR 32.908(a) and FAR 32.908(b), respectively.

[54 FR 9808, Mar. 8, 1989]

932.970 Implementing DOE policies and procedures.

(a) *Invoice payments.* (1) *Contract Settlement Date.* For purposes of determining payment due dates on a final invoice pursuant to paragraph (a)(2)(ii) of the basic Prompt Payment clause and (a)(2)(i)(B) of its Alternate I at FAR 52.232-25, contract settlement occurs when the contracting officer determines that the contractor has complied with all contract terms and conditions, including all administrative requirements (e.g., execution and delivery of contractor's release of claims, execution of understandings setting forth final indirect cost rates, and establishment of final contract price). In addition, for purposes of determining any interest penalties under cost-type contracts, the effective date of contract settlement shall be the effective date of the final contract modification issued to acknowledge contract settlement and to close out the contract.

(2) *Constructive acceptance periods.* It is expected that, in the majority of cases, Government acceptance or approval can occur within the standard constructive acceptance or approval periods specified in paragraphs (a)(6)(i) of the basic Prompt Payment clause and (a)(5)(i) of its Alternate I at FAR 52.232-25. However, the contracting officer should coordinate these provisions with the DOE official(s) that will be responsible for performing the acceptance and/or approval function(s). Where the contracting officer determines, in writing, on a case-by-case basis, that it is not reasonable or feasible for DOE to perform the acceptance or approval function within the standard period, the contracting officer should specify a longer constructive acceptance or approval period, as appropriate. Considerations include, but are not limited to, the nature of supplies or services involved, geographical site location, inspection and testing requirements, shipping and acceptance terms, and available DOE resources.

(b) *Contract Financing Payments.* (1) The standard payment due date, to be specified by the contracting officer in paragraphs (b)(2) of the basic Prompt Payment clause and its Alternate I at FAR 52.232-25, shall normally be 30 days for progress payments and 30 days for interim payments on cost-type contracts.

(2) Contracting officers may specify payment due dates that are less than the standard when a determination is made, in writing, on a case-by-case basis, that a shorter contract financing payment cycle will be required to finance contract work. In such cases, the contracting officer should coordinate with the finance and program officials that will be involved in the payment process to ensure that the contract payment terms to be specified in solicitations and resulting contract awards can be reasonably met. Consideration should be given to geographical separation, workload, contractor ability to submit a proper request, and other factors that could affect timing of payment. However, payment due dates that are less than 7 days for

progress payments or less than 14 days for interim payments on cost-type contracts are not authorized

[54 FR 9808, Mar. 6, 1989]

Subpart 932.70—DOE Loan Guarantee Authority

932.7000 Scope of subpart.

This subpart prescribes policies and procedures for guarantees of loans made by a private financial institution to borrowers performing DOE contracts relating to DOE programs for which guaranteed loans are authorized by legislation.

932.7001 Definitions.

(a) The terms "borrower," "Federal Reserve Board," and "guaranteed loan" have the same meaning set forth in FAR 32.301.

(b) "Guaranteeing Agency" as used in this subpart, means the Department of Energy when authorized to guarantee loans through the Federal Reserve Banks.

932.7002 Authority.

Guaranteed loan applications shall be authorized and transmitted to the Federal Reserve Board only by the Secretary, or designee specified for that purpose, and only when made pursuant to enabling legislation or other authority; e.g., by executive order or regulation.

932.7003 Policies.

The following policies governing the exercise of its loan guarantee authority have been established by DOE:

(a) The use of the loan guarantee authority is not restricted to contracts or subcontracts of any particular type or of class. Each case is to be evaluated on its own merits and under the particular circumstances applicable thereto.

(b) The fact that a contract has been awarded as a result of competitive bidding should not, of itself, render the loan ineligible for guarantee by DOE if the contractor is financially responsible and its need for working capital is the result of the impact of a defense program or any other DOE program for which guaranteed loans are authorized.

(c) The guarantee authority should, in general, not be used in connection with loans to contractors required to furnish performance bonds, except in those cases in which the time likely to be required for the surety or DOE to take over in the event of default will result in delays which cannot be tolerated by the particular program concerned. When performance bonds have been furnished, the surety shall be required to subordinate its rights in favor of the guaranteed loan.

(d) The criterion that the materials or services to be provided cannot readily be acquired from alternative sources does not require the finding that the materials or services are absolutely unobtainable elsewhere. The criterion should be so applied as to permit guarantees of loans when, although the materials or services can be obtained elsewhere, such factors as the urgency of supply schedules, technical capacity of the contractor, comparative prices, and time and expense involved in reissuing the contract, including termination payment, establish that it is to the Government's advantage not to resort to alternative sources merely because the contractor or subcontractor may require a guaranteed loan.

(e) If it is known at the time the contract is to be awarded that the low offeror who is technically qualified and competent to furnish the required materials and services will require a guaranteed loan, the contracting officer should obtain appropriate advice and in reaching a decision should consider at least the following:

(1) The savings to be realized by awarding the contract to the low offeror;

(2) The risk to the Government in guaranteeing a loan; and

(3) The likelihood, if award is made to the second low offeror, of that offeror's applying for a guaranteed loan at a later date.

Extreme care should be exercised in rejecting a low bid or proposal simply because the low offeror requires a guaranteed loan.

(f) The amount of the loan should bear reasonable relationship to such factors as the value and terms of the contract, the probable investment required to be made by the contractor in payrolls and inventories, the frequency with which contract payments are to be made, and the borrower's current working capital position.

(g) Borrowings for working capital purposes under guaranteed loans shall be limited to the amount necessary to perform the contract for which the loan is sought. In order that the contractor will also use its own funds in the performance of the contracts, amounts outstanding under the loan or line-of-credit shall be limited to an amount not to exceed 90 percent of the borrower's investment in its contracts, regardless of the total amount of the loan or line of credit authorized. The borrower's investment includes all items for which the borrower would be entitled to payment on performance or termination of contracts, but does not include any items for which no work has been done nor expenditures made.

(h) Unless there are exceptional circumstances, the loan should mature not later than 30 days after the estimated date of final payment under the contract.

932.7004 Procedures.

932.7004-1 Guaranteed loans for civilian programs.

The procedures for authorizing a guaranteed loan under legislation other than section 301 of the Defense Production Act of 1950 (50 U.S.C. App. 2091) shall be essentially the same as those set forth in FAR 32.304, Procedures, FAR 32.305, Loan Guarantees for Terminated Contracts, and FAR 32.306 Loan Guarantee for Subcontacts; except that any contrary provisions required by enabling legislation authorizing the loan shall govern.

932.7004-2 Criteria.

(a) The materials or services to be furnished by the contractor are necessary to the Government interest.

(b) The materials or services cannot as a practical matter be obtained from alternate sources without delay or impeding the Government's interest, except that no small business concern shall be held ineligible for the issuance of such guarantee by reason of alternative sources of supply.

(c) The contractor has demonstrated its inability to obtain the necessary financing in conventional credit channels without the guarantee.

(d) There is reasonable assurance that the loan can be repayed.

(e) The contractor is competent to perform the contract.

932.7004-3 Eligibility.

The applicant's eligibility for a guaranteed loan will be based on:

(a) Contracting officer determinations and findings regarding items (a), (b) and (e) in 932.7004-2 as incorporated in a Certificate of Eligibility (FAR 32.304-2); and

(b) The Controller's determination for items (c) and (d) in 932.7004-2 based on information contained in the application, the Federal Reserve Bank's report, and information furnished by the contracting activity concerned.

PART 933—PROTESTS, DISPUTES, AND APPEALS

Subpart 933.1—Protests

933.102 General.
933.103 Protests to the agency.
933.104 Protests to GAO.
933.105 Protests to GSBCA.
933.106 Solicitation provision.
933.170 Subcontract level protests.

Subpart 933.2—Disputes and Appeals

933.211 Contracting officer's decision.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 51 FR 31336, Sept. 3, 1986, unless otherwise noted.

Subpart 933.1—Protests

933.102 General.

(a)(1) The contracting officer shall attempt to informally resolve a protest by discussions except when such attempts would be inappropriate (e.g., further communications would be futile). Protests to the Department and to the General Accounting Office

(GAO) may be withdrawn by a telephone call from the protester.

(2) The contracting officer should coordinate the handling of any protest with counsel. Communications to a protester or other interested party should almost always be coordinated with counsel. When conferences are held with the GAO, counsel shall play a key role in representing the Department. The Department's defense of a protest to the General Services Administration Board of Contract Appeals or to a court shall be managed by counsel.

(c) If a protest involves a decision of a source selection official at the Headquarters level, the contracting activity position shall be coordinated with the Assistant General Counsel for Procurement and Finance, Headquarters, before submitting a report in response to a protest.

933.103 Protests to the agency.

(a) When a protest to an acquisition under which no award has been made is filed only with the Department of Energy (contracting activity or Headquarters), an award shall not be made until the matter is resolved unless a Head of the Contracting Activity (HCA) request to make award, concurred in by counsel, using the criteria of FAR 33.103(a), endorsed by the program secretarial officer, is approved by the Procurement Executive. The request shall establish that one of the following applies:

(1) The supplies or services to be contracted for are urgently required,

(2) Delivery or performance will be unduly delayed by failure to make award promptly.

(3) A prompt award will otherwise be advantageous to the Government.

(c) Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals must be filed prior to bid opening or the closing date for receipt of initial proposals. In acquisitions where proposals are requested, improprieties which do not exist in the initial solicitation but which are allegedly subsequently incorporated into the solicitation must be protested not later than the next closing date for receipt of proposals following the incorporation. In cases other than these, protests must be filed no later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. These time limits may be waived by the deciding official if it is determined to be in the Department's best interest.

(d)(1) Protests made before or after award filed at the Headquarters level shall be decided by the Procurement Executive.

(2) Protests made before or after award to a DOE contracting activity shall be decided by the HCA except for the following cases, which shall be decided by the Procurement Executive:

(i) The action is protested to the Headquarters level prior to its resolution by the HCA.

(ii) The HCA is the signatory contracting officer.

(iii) The HCA finds that the issues raised have the potential for significant impact on DOE acquisition policy.

(3) The Department will cease processing an agency protest which is also made outside the Department.

(4) If a protest is filed with a contracting activity and a decision is rendered, the Department will not entertain a protest of the same issue to Headquarters.

(5) The Business Clearance Division, Headquarters, shall be notified immediately of all protests (Headquarters or contracting activity) filed with the contracting activity.

(e) Upon receipt of a protest lodged with the Department, the contracting officer shall prepare a report similar to that discussed in FAR 33.104(a)(2). In the case of a protest filed at the Headquarters level, the report shall be forwarded to the Business Clearance Division within 25 working days of being notified of such a protest with a proposed response to the protest. The contracting officer shall check with the Business Clearance Division as to the number of copies of the report to be submitted. The Procurement Executive (for protests at the Headquarters level or those specific HCA protests cited in (d)(2) of this section) or an HCA (for protests at the contracting activity level) will render a decision on a protest within 45 working days, unless a longer period of time is determined to be needed. In the case of a protest to a contracting activity, the contracting officer shall immediately furnish the Business Clearance Division with a copy of the protest and an information copy of the protest report and the HCA's decision when issued.

933.104 Protests to GAO.

(a)(1) The Department's position, to be set forth in an agency report, shall be coordinated with counsel as soon as practical.

(3) The notice to other persons, discussed at FAR 33.104(a)(3), shall be given by the contracting officer. The interested parties shall be advised that they may submit their views and relevant information directly to the GAO, with a copy to the contracting officer and another copy to the U.S. Department of Energy, Business Clearance Division (MA-441), Washington DC 20585.

(4) The contracting activity shall submit—

(i) A complete report in quadruplicate plus one copy for each interested party,

(ii) The name and address of each interested party, and

(iii) Identification of the privileged information not to be released outside of the Government, to the following address within 20 working days of the date of receipt from GAO of the telephonic notice of such protest (unless a different time period is established by the Business Clearance Division), or within 7 working days after receipt of notification of a determination to use the express option (unless a different time period is established by the Business Clearance Division), unless the factors at FAR 33.104(a)(4) (i) and (ii) apply:

U.S. Department of Energy
Business Clearance Division (MA-441)
Forrestal Building, Room 1l-030
1000 Independence Avenue, SW
Washington, DC 20585.

If the contracting officer anticipates any delay in meeting these due dates, immediate contact shall be made with the Business Clearance Division, Headquarters. This shall be followed up with a written explanation of the reason for delay to the Business Clearance Division.

(5)(i) Distribution of the agency report to the GAO, the protester and the other interested parties regarding the protest, shall be made by the Business Clearance Division.

(6) The Procurement Executive has the authority and responsibility for reviewing and forwarding to the GAO the information required by FAR 33.104(a)(2) and otherwise coordinating communications with the GAO. This authority has been delegated to the Director, Business Clearance Division.

(b) *Protests before award.* (1) Except in the case of a subcontract level protest, when the Department has received notice from the GAO of a protest filed directly with the GAO, a contract may not be awarded until the matter is resolved, unless authorized by the head of the contracting activity in accordance with FAR 33.104(b). Before the head of the contracting activity authorizes the award, the required finding shall be concurred in by counsel, endorsed by the program secretarial officer, and approved by the Procurement Executive. The finding shall address the likelihood that the protest will be sustained by the GAO. A copy of the signed authorization shall be furnished to the Business Clearance Division, Headquarters. If a protest is at the subcontract level, the award decision will be resolved on a case-by-case basis as discussed in 933.170.

(c) *Protests after award.* (1) If a protest is at the subcontract level, the provisions of 933.170 shall apply.

(2) If a contracting activity believes that it should not immediately suspend performance or terminate the prime contract, it shall contact the Business Clearance Division, Headquarters, for instructions on required due dates and clearance approvals for the written authorization to continue performance. The written finding authorizing contract performance shall address the likelihood that the protest will be sustained by the GAO. A copy of the signed finding and authorization shall be furnished to the Business Clearance Division, Headquarters.

(f) *Notice to GAO.* (1) The notice to the GAO, discussed at FAR 33.104(f), shall be given by the HCA making the award, after approval of the Procurement Executive, provided no DOE-wide policy issue is involved, in which case the notice shall be given by the Procurement Executive.

(2) It is the policy of the Department to promptly comply with recommendations set forth in Comptroller General Decisions except for compelling reasons.

(3) Requests for reconsideration shall be handled in accordance with GAO Bid Protest Regulations 21.12.

933.105 Protests to GSBCA.

(a)(1)(i) Subcontract level acquisition of ADP equipment and services is rarely conducted under section 111 of the Federal Property and Administrative Services Act of 1949 as amended to reflect Pub. L. 89-306 (the Brooks Act). Since the GSBCA has jurisdiction only over a protest involving an ADP acquisition conducted under the Brooks Act, subcontract level protests normally will not be heard by the GSBCA. If such a protest is lodged, the local counsel and the Office of the Assistant General Counsel for Procurement and Finance, Headquarters, shall be promptly notified.

(ii) Communications from a contracting activity to the GSBCA which are likely to provoke unusual public interest or are of a new or unusual nature (e.g., communications regarding a subcontract level protest) shall be coordinated with the Office of the Assistant General Counsel for Procurement and Finance, Headquarters prior to their submission. This office (and/or the Business Clearance Division, Headquarters) is available for consultation and assistance to personnel of a contracting activity.

(2)(i) The interested parties shall be advised that they may submit their views and relevant information directly to the GSBCA with a copy to the contracting officer.

(iii) The respondent (DOE) may appear before the GSBCA by an attorney at law or by the contracting officer or that individual's representative (GSBCA Rules of Procedure, Rule 6). DOE appearances before the GSBCA shall be managed by counsel of the cognizant contracting activity.

(iv) A prehearing conference will ordinarily be held within 6 calendar days after the filing of the protest (GSBCA Rules of Procedures, Rule 10). The DOE shall be represented by counsel of the cognizant contracting activity at such conference.

(b) The agency file, to be submitted within 10 working days of the filing of a protest, as required by Rule 4 of the GSBCA Rules of Procedure, shall be assembled by the contracting officer in coordination with counsel of the cognizant contracting activity.

(c) The preparation of the agency response setting forth the Department's defenses to the protest to be submitted within 15 working days after the filing of a protest (GSBCA Rules of Procedure, Rule 7) shall be managed by counsel of the cognizant contracting activity.

(d)(1) At a hearing on a request for suspension of procurement authority, the DOE shall be represented by counsel of the cognizant contracting activity.

(2) The determinations and findings required by FAR 33.105(d)(2) shall be executed by the HCA.

(4) If the GSBCA suspends the procurement authority to acquire any goods or services not previously delivered and accepted under an awarded contract, the contracting officer shall invoke the clause entitled "Stop-Work Order" (FAR 52.212-13) or otherwise cause the contractor to cease performance and to suspend related activities that may result in additional obligations being incurred by the Government.

(g) Prior to appealing a final decision of the GSBCA, the contracting activity shall consult with the Office of the Assistant General Counsel for Procurement and Finance and with the Business Clearance Division, Headquarters.

(h) The contracting officer promptly after receipt shall furnish an information copy of a protest and the Decision(s) of the GSBCA to the Business Clearance Division.

933.106 Solicitation provision.

The contracting officer shall supplement the provision at 52.233-2, Service of Protest, in solicitations for other than small purchases by adding the provision at 952.233-2.

933.170 Subcontract level protests.

(a) The General Accounting Office has stated it will not consider subcontract level protests except where the subcontract is "by" or "for" the Government (see *Optimum Systems, Incorporated*, 54 Comp. Gen. 767 (1975), 75-1 CPD ¶ 166). The Department also will not consider a subcontract level protest except where the subcontract is "by" or "for" the Government. If the subcontract level protest involves a management and operating prime contractor, see Subpart 970.4406.

(b) Upon receiving notice of a subcontract level protest to the Department prior to award, the contracting officer shall notify the prime contractor and shall direct that award not be made prior to resolution of such protest unless a request to make an award in the face of a protest is approved by the Procurement Executive in accordance with 933.103(a). If notice of a protest is filed with the contracting officer within 10 days after award, the contracting activity shall contact the Headquarters Business Clearance Division for guidance.

(c) Upon receiving notice of a subcontract level protest to the GAO either before or after award the contracting officer shall contact the Business Clearance Division Headquarters for guidance relating to suspension of award or stay of performance.

(d) Within 3 working days of notice of a subcontract level protest, to the Department or with the GAO, the contracting officer shall develop a position on whether the protest falls within the scope of paragraph (a) above and shall communicate that position to the Business Clearance Division. If it is determined that the protest falls within the scope of paragraph (a), a report shall be prepared in accordance with applicable procedures. If it is determined that the protest does not fall within the scope of paragraph (a), a report shall be prepared making a case for nonjurisdiction. Where a reasonable question exists as to whether the GAO or DOE should take jurisdiction, the Department's report should address both the jurisdiction and merit issues.

(e) If the GAO or the Procurement Executive does not agree with a report recommending nonjurisdiction, a supplemental report addressing the merit issue shall be provided to the Business Clearance Division within 15 working days of notification of such disagreement.

(f) Preparation of reports on subcontract level protests is the responsibility of the contracting officer. Assistance shall be obtained from DOE counsel and may be obtained from the prime contractor to the degree deemed appropriate.

Subpart 933.2—Disputes and Appeals

933.211 Contracting officer's decision.

(a) In addition to the information specified in FAR 33.211, the contracting officer's decision shall include the contracting officer's written findings of fact.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 935—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
935.007 Solicitations.
935.010 Scientific and technical reports.
935.015 Contracts for research with educational institutions and nonprofit organizations.
935.016 Research opportunity announcements.
935.016-1 Scope.
935.016-2 Applicability.
935.016-3 Definitions.
935.016-4 Issuance of Research Opportunity Announcements.
935.016-5 Content of proposal submissions.
935.016-6 Receipt and handling of proposals and late proposal submission.
935.016-7 Evaluation of proposals.
935.016-8 Selection of proposals.
935.016-9 Responsibilities of the awarding contracting activity.
935.070 Contract clauses.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 12016, Mar. 28, 1984, unless otherwise noted.

935.007 Solicitations.

See Subpart 917.72 for the conditions under which Program Research and Development Announcements may be used, and the procedures for their use.

935.010 Scientific and technical reports.

(c) All research and development contracts which have as a requirement the submission of a scientific or technical report shall include a provision which requires the contractor to submit a copy of the final, edited report to the following address: U.S. Department of Energy Technical Information Center, P.O. Box 62, Oak Ridge, TN 37830.

(d) Contractors shall be required to submit with the report a completed DOE Form RA-426, "DOE and Major Contractor Recommendations for Announcement and Distribution of Documents," except when the contract is with an educational institution, in which case the contractor shall be required to submit with the report a completed DOE Form RA-427, "University Contractor, Grantee and Cooperative Agreement Recommendations for Announcement and Distribution of Documents."

935.015 Contracts for research with educational institutions and nonprofit organizations.

See Subpart 917.71 for the conditions and procedures under which Special Research Contracts may be used and the procedures for their use.

935.016 Research opportunity announcements.

935.016-1 Scope.

(a) Sections 935.016 and 935.016-1 through 935.016-9 set forth the policies and procedures for contracting for research through the use of broad agency announcements as authorized by the Competition in Contracting Act of 1984 (CICA) (41 U.S.C. 259(b)(2)) and Federal Acquisition Regulation (FAR) 6.102(d)(2). Within DOE, broad agency announcements will be designated as Research Opportunity Announcements (ROAs).

(b) Research Opportunity Announcements are a form of competitive solicitation under which DOE's broad mission- and program-level research objectives are defined; proposals which offer meritorious approaches to those objectives are requested from all offerors capable of satisfying the Government's needs; those proposals are evaluated by scientific or peer review against stated specific evaluation criteria; and selection of proposals for possible contract award is based upon that evaluation, the importance of the research to the program objectives, and the funds availability.

[55 FR 33314, Aug. 15, 1990]

935.016-2 Applicability.

(a) Sections 935.016 and 935.016-1 through 935.016-9 apply to all DOE Headquarters and field program organizations which, by virtue of their statutorily mandated mission or other such authority as may exist, support energy or energy-related research activities through contractual relationships.

(1) The ROA may be used as a competitive solicitation procedure through which DOE acquires basic and applied research in support of its broad mission- and program-level research objectives, and these objectives may be best achieved through relationships where contractors pursue diverse and dissimilar solutions and approaches to scientific and technological areas related to DOE's missions and programs.

(2) The ROA shall not be used as a solicitation method when one or more of the following conditions exist:

(i) In accordance with the Federal Grant and Cooperative Agreement Act, Public Law 97-258, the principal purpose of the relationship will be assistance;

(ii) The purpose of the research is to accelerate the demonstration of the technical, operational, economic, and commercial feasibility and environmental acceptability of particular energy technologies, systems, subsystems, and components that would appropriately be acquired by Program Opportunity Notices (PONs) in accordance with subpart 917.72;

(iii) The research is required in support of a specific project area within an energy program which appropriately would be acquired by Program Research and Development Announcements (PRDAs) in accordance with subpart 917.73;

(iv) The research requirements can be sufficiently defined to allow the use of contracting by negotiation in accordance with Federal Acquisition Regulation (FAR) part 15;

(v) The purpose of the research is the acquisition of goods and services related to the development of a specific system or hardware acquisition; or,

(vi) Any funds to be obligated to a resulting contract will be used to conduct or support a conference or training activity.

(b) The following limitations are applicable to the use of ROAs:

(1) The use of broad agency announcements for the acquisition of that part of development not related to the development of a specific system or hardware is authorized by FAR 35.016(a). Notwithstanding that authorization, ROAs shall be used within DOE only to acquire basic and applied research.

(2) Proposals shall not be solicited from, and contracts shall not be awarded to, any specific entity which operates a Government-owned or -controlled research, development, special production, or testing establishment, such as DOE's management and operating contractor facilities, Federally Funded Research and Development Centers chartered by other agencies, or other such entities. This limitation shall not be used to preclude the parent organization of the entity operating the Government-owned or -controlled facility, its subsidiaries, other divisions, or other related business affiliates from proposing, or receiving awards, under DOE's ROA solicitations, provided that any proposed resources (personnel, facilities, and other resources) used in the management and operation of the Government-owned or -controlled facility have been approved for use in the ROA effort by the sponsoring agency.

[55 FR 33314, Aug. 15, 1990]

935.016-3 Definitions.

Awarding Contracting Activity, for purposes of §§ 935.016 and 935.016-1 through 935.016-9, means any DOE Contracting Activity assigned to negotiate, award, and administer a resultant contract, and otherwise perform related post-selection acquisition functions.

Cognizant Contracting Activity and "Contracting Activity", for purposes of sections 935.016 and 935.016-1 through 935.016-9, mean the DOE Contracting Activity assigned to perform all acquisition functions from the initiation of the ROA requirement through completion of the selection process. The Cognizant Contracting Activity ("Contracting Activity") shall be that DOE Contracting Activity which is anticipated to be the primary and predominant Awarding Contracting Activity for the negotiation, award, and administration of resultant contracts. However, the initial assignment of a Contracting Activity as the "Cognizant Contracting Activity" for the ROA does not preclude the designation of additional Contracting Activities as Awarding Contracting Activities after the selection decision(s).

Cognizant DOE Program Office, DOE Program Office, and *Program Office* mean the Headquarters or field office element with direct responsibility for issuance of the ROA and the subsequent evaluation and selection of proposals.

Objective review means a thorough, consistent and independent examination and evaluation of a proposal by persons knowledgeable in the field of endeavor for which support is requested; such review is conducted to provide facts and advice to the selection official based upon the evaluation criteria established in the ROA.

Peer reviewer means a professional individual not employed by the Government selected to conduct an objective review of a research proposal, because that individual has expertise in the same or related scientific or technical field as the research area set forth in the proposal and is recognized in the scientific or technical community.

Scientific reviewer means a professional Government employee selected to conduct an objective review of a research proposal because that individual has expertise in the same or related scientific or technical field as the research area set forth in the proposal.

Selection Official means the Senior Program Official or designee having the authority to select for award those proposals received in response to an ROA which were determined to be meritorious in relation to the evaluation criteria and the program policy factors set forth in the ROA.

Senior Program Official, for purposes of sections 935.016 and 935.016-1 through 935.016-9, means, in addition to those individuals listed in 903.100, Managers of DOE Operations Offices, and Directors of DOE Energy Technology Centers.

[55 FR 33315, Aug. 15, 1990]

935.016-4 Issuance of Research Opportunity Announcements.

(a) In order to maintain a comprehensive and well-integrated research program, the cognizant DOE program office shall be responsible for issuance of the ROA and the subsequent evaluation and selection of proposals.

(b) Each ROA shall consist of the following:

(1) An ROA identification number and the statutory and/or regulatory authority for the issuance of the ROA;

(2) The title of the ROA;

(3) A description of the program objectives and, where appropriate, a statement of the intended uses by DOE of the results of the research;

(4) A summary of the research agenda or potential areas for research initiatives, including any areas requiring additional research or any other information which identifies research areas in which contracts may be awarded;

(5) The period of time during which proposals will be accepted from offerors for evaluation and other information concerning the consideration and disposition of late porposals;

(6) The total amount of money available or estimated to be available for potential contract awards;

(7) The name and address of the DOE program office responsible for issuance of the ROA;

(8) The address for receipt of proposals;

(9) The name of the DOE official within the program office to serve as a point of contact for:

(i) Additional information,

(ii) The list of any specific proposal forms to be used by the offeror in submitting a proposal, and

(iii) The address where those forms may be obtained;

(10) All business, technical, and/or cost evaluation (including any requirement for cost participation by the offeror) criteria, including any additional criteria to those set forth in this subpart, the relative importance of the evaluation criteria, and other appropriate proposal preparation instructions;

(11) Any factors to be considered in determining the importance of any proposed research to the program objectives;

(12) A statement that DOE is under no obligation to reimburse the offeror for any costs associated with the preparation or submission of proposals;

(13) A statement that DOE reserves the right to fund, in whole or in part, any, all or none of the proposals submitted;

(14) A statement that DOE is not required to return to the offeror a proposal which is not selected;

(15) A statement that each proposal will be objectively reviewed on its own merit against the evaluation criteria stated in the ROA using scientific and/or peer reviewers, and that selection of a proposal will be made in consideration or that evaluation, the importance of the proposed research to the program objectives, and funds availability;

(16) A statement that DOE is not obligated to award a contract to an offeror merely because the offeror's proposal was accepted by DOE for evaluation.

(c) The Senior Program Official of the cognizant DOE program office shall determine in writing, after consultation with the responsible Contracting Officer at the Cognizant Contracting Activity, that the use of a ROA is both necessary and appropriate as a solicitation instrument in meeting program objectives. This determination shall be made prior to the issuance of the ROA, and shall be based upon facts and explanations which address the conditions stated in 935.016-1 (a) and (b), and any other pertinent information.

(d) Prior to the synopsis and issuance of the ROA, a confidential plan(s) establishing a common basis for the evaluation of proposals shall be developed. This plan shall directly correspond to the evaluation criteria that will be specified in the ROA.

(e) Review of the ROA solicitation prior to its issuance will be consistent with solicitation review procedures established by the cognizant Contracting Activity.

(f) Each ROA issued will provide for a proposal submission period of a least ninety (90) days but not greater than one year. However, in instances where the Program Office intends to issue a succeeding ROA, and such issuance may become unduly delayed because of administrative procedures, the program office may amend the current ROA to extend the open period for up to an additional sixty (60) days. ROAs may be reissued by the program office at any time to become effective after the original ROA proposal submission period has elapsed, subject to the same requirements of this subpart as a new ROA.

(g) The full text of the ROA will be published in the FEDERAL REGISTER. The Contracting Officer will announce the availability of the ROA in the "Commerce Business Daily" in accordance with FAR 35.016(c). Information concerning the availability of the ROA may also be published in scientific, technical, or engineering publications. The full text of any amendments to the ROA shall be published in the FEDERAL REGISTER and concurrently announced in the "Commerce Business Daily."

[55 FR 33315, Aug. 15, 1990]

935.016-5 Content of proposal submissions.

Each ROA shall require that a proposal (whether a new proposal or a proposal for the continuation of research previously funded by DOE as a contract) will be submitted by the offeror in the quantities specified in the ROA to the place designated in the ROA as the place for receipt of proposals. Each proposal will contain three sections which, at a minimum, provide the following information:

(a) Section I: Offeror Information:

(1) Name and address of the offeror;

(2) The ROA solicitation number;

(3) The date of submission of the proposal and the offer acceptance period;

(4) The names and addresses of any other Federal, State, or local government agency, or any other public or private entity who has in the past, or is currently, or expects, in the future, to provide funds for the same or similar research activities of the offeror;

(5) A proposal cover sheet signed by an individual authorized to contractually obligate the offeror.

(b) Section II: Technical Proposal:

(1) A detailed description of the proposed research, including the objectives of the research, the methodology and approaches for accomplishing those objectives, the anticipated re-

sults of the research, and, where appropriate, a schedule depicting key research milestones with a description of the milestones and the relationship of the proposed research to the program objectives and evaluation criteria stated in the ROA. This description should also include:

(i) A listing and a discussion of any previous or on-going research performed by the offeror in areas related to those contemplated by the ROA, and

(ii) Where appropriate, a discussion of how the intened results of the research will achieve the use intended by DOE;

(2) Resumes for the proposed principal investigator(s) or other key individuals addressing the qualification, experience, and capabilities of these individuals;

(3) A description of the facilities and other resources of the offeror which will be used by the offeror in performance of the proposed research;

(4) A description of any facilities and other non-monetary resources requested to be furnished by the Government for use by the offeror in performance of the proposed research; and,

(5) A description of the structure and lines of the authority (both technical and administrative) of the offeror's organization and the relation thereto to the proposed research effort.

(c) Section III: Cost Proposal:

(1) A fully executed Standard Form (SF) 1411;

(2) Any supporting cost exhibits as may be required by the ROA.

[55 FR 33316, Aug. 15, 1990]

935.016–6 Receipt and handling of proposals and late proposal submission.

(a) The cognizant DOE program office, with the concurrence of the Contracting Officer, shall establish formal administrative procedures for accountability, control of receipt and distribution, evaluation, and disposition of proposals received in response to an ROA to insure that proposal information, in whole or in part, is properly safeguarded from unauthorized disclosure or use. These administrative procedures shall be consistent with the policies and procedures set forth in FAR 15.411 and 15.413, and in DEAR 915.413 and subpart 927.70. Where a program office has established a system for objective merit review of financial assistance applications pursuant to 10 CFR 600.16, the procedures of such a system can be adopted by the program office for use under the ROA, provided that any conflicts, inconsistencies, or ambiguities between the system for objective merit review and the requirements of the FAR and the DEAR shall be resolved in favor of the FAR and the DEAR requirements.

(b) The Senior Program Official for the cognizant program office shall be responsible for ensuring that the procedures concerning unauthorized disclosure or use of proposal information are consistently complied with by the evaluators assigned to the ROA.

(c) Proposals received for evaluation subsequent to the close of the proposal submission period will be considered in accordance with FAR 15.412. Proposals determined to have been received subsequent to the close of the proposal submission period may be considered and evaluated under a succeeding ROA issued by the program office, provided that the offeror so affirms, in writing, that it desires evaluation of its proposal under the succeeding ROA, and provides the program office, as part of its affirmation, any needed updated information relating to its original proposal.

(d) Proposals may be withdrawn by the offeror at any time prior to award of a resultant contract by written notice to the cognizant program office.

[55 FR 33316, Aug. 15, 1990]

935.016–7 Evaluation of proposals.

(a) The Senior Program Official for the cognizant DOE program office shall, by written delegation, appoint an organization within that program office to be responsible for the conduct and administration of the proposal evaluation process. This organization shall:

(1) Serve as the primary point of contact on all matters concerning the ROA;

(2) Ensure that a confidential evaluation plan(s) based directly upon the

evaluation criteria set forth in the ROA is developed;

(3) Ensure that an initial review of proposals is conducted in accordance with paragraph (c) of this subsection;

(4) Select the scientific and/or peer reviewers and administer the evaluation of each proposal;

(5) Ensure that a consolidated report of the evaluation findings for each proposal and other needed information are prepared and provided for use as an advisory report to the Selection Official; and

(6) Perform other administrative duties (e.g., conduct debriefings, notify offerors) as may be necessary to facilitate the evaluation process.

(b) The evaluation of each proposal shall begin upon its receipt, or as soon as possible thereafter.

(c) All proposals will undergo an initial review to determine:

(1) The responsiveness and completeness of the proposal to the requirements of the ROA, including the appropriateness of the research to the intended uses by DOE, and

(2) The relevance of the proposed effort to the broad areas of research contemplated by the ROA.

If, after completion of the initial review, a proposal is determined not to meet the requirements stated in paragraphs (c) (1) and (2) of this subsection, the offeror shall be promptly notified that its proposal has been eliminated from any further evaluation under the ROA and the general basis for such a determination.

(d) Proposals which survive the initial review shall generally be reviewed by at least three scientific and/or peer reviewers. The composition of the group may be any mix of scientific and peer reviewers. To the extent possible, individuals to be used as scientific or peer reviewers should not be individuals who perform, or are likely to perform, any of the following activities for any of the offerors or on behalf of the Government:

(1) Providing substantive technical assistance to the offeror;

(2) Approving/disapproving or having any decision-making role regarding the proposal;

(3) Serving as the project manager/officer or otherwise monitoring or evaluating the offeror's contractual performance;

(4) Serving as the Contracting Officer, the Contracting Officer's Representative, or otherwise monitoring or evaluating the offeror's performance under the program; or

(5) Auditing the offeror or the contract.

Anyone who has line authority over a person who is ineligible to serve as a reviewer because of the above limitations is also ineligible to serve as a reviewer. In instances where the cognizant program office has established a procedure for the review of financial assistance applications using a published merit review system (see 10 CFR part 600), the types of review groups allowed by 10 CFR 600.16(d) may be used for purposes of satisfying the requirements for scientific and/or peer review under this subpart, subject to any other requirements stated herein.

(e) Proposals will be evaluated against the criteria set forth in the ROA to determine such issues as the following:

(1) The overall scientific and technical merit of the proposal including the merit and value of related research performed by the offeror under previous or existing contracts or other arrangements;

(2) The appropriateness of the proposed method or approach;

(3) The qualifications, capabilities, experience, and demonstrated past performance of the offeror, principal investigator, and/or key personnel;

(4) The adequacy of the offeror's facilities and resources; and,

(5) The realism of the proposed costs.

(f) Proposals received in response to the ROA should not be evaluated against each other since they are not submitted in accordance with a common statement of work. Competitive range determinations shall not be made, and best and final offers shall not be requested.

(g) During the evaluation process, communications with an offeror should occur only for purposes of clarification of that offeror's proposal. Communication may be accomplished either in writing or orally, provided that, in instances where oral communications occur, a written record of such communication is maintained.

(h) A proposal which provides for the continuation of research previously funded by DOE as a contract awarded as a result of either a previously issued ROA or an unsolicited proposal may be evaluated and considered for selection and award under the instant ROA, provided that:

(1) The proposed research is within the specific areas of research contemplated by the ROA;

(2) The proposal is received during the open period of the ROA; and

(3) The proposal is fully responsive to the requirements of the ROA.

(i) An unsolicited proposal for new work not specifically submitted in response to the ROA may be evaluated and considered for selection and award under the instant ROA, provided that:

(1) The conditions stated in paragraphs (h)(1) and (h)(2) of this subsection are met; and,

(2) The offeror, after written notification from the Program Office that the unsolicited proposal falls within the scope of the ROA, expressly states, in writing, that the unsolicited proposal is now to be considered a submission under the instant ROA; and,

(3) The offeror is otherwise able to provide, within the open period of the ROA, any additional information required by the ROA to allow for an evaluation of that offeror's proposal.

(j) For each proposal, a consolidated written report shall be prepared and shall include the findings of all reviewers. The report shall contain sufficient detail to indicate that the proposal was evaluated fairly and objectively against the evaluation criteria. This report shall be submitted to the Selection Official as an advisory report to be used in selecting proposals.

[55 FR 33316, Aug. 15, 1990]

935.016–8 Selection of proposals.

(a) After considering the evaluation findings, the importance of the proposed research to the program objectives, and funds availability, the Selection Official shall determine whether a specific proposal warrants selection for negotiation and award of a contract. The decision of the Selection Official shall be documented in writing and shall address, as appropriate, such issues as:

(1) The scientific and technical merit of the proposal in relation to the ROA evaluation criteria;

(2) The qualifications, capabilities, and experience of the proposed personnel; technical approach; facilities; and where applicable, cost participation by the offeror (or any combination of the above);

(3) The importance of the proposed research to the program objectives;

(4) Which areas of the proposal, whether in whole or in part, have been selected for funding, and the amount of that funding; and,

(5) Assurances that any other requirements which are imposed by statute, regulation, or internal directives relating to the specific research activities and which are properly the responsibility of the Program Office have been satisfied.

(b) Absent extenuating circumstances, selection decisions regarding any individual proposal should be made within six (6) months after receipt of the proposal. Proposals which have been evaluated may be accumulated to allow for a consolidated selection decision so long as not more than six (6) months have passed since the receipt of any of the proposals so accumulated.

(c) The cognizant DOE program official shall notify successful and unsuccessful offerors of any selection/nonselection decisions. These notices shall be made in writing promptly after the decision is made, and shall, at a minimum, state in general terms, the basis for the determination. In the case of notices to successful offerors, the notices shall state:

(1) General information regarding the subsequent activities of the process leading to contract negotiation and award, and the identity of the awarding contracting activity,

(2) That the proposal has been selected subject to negotiation and execution of a satisfactory contract,

(3) That DOE assumes no obligation, financial or otherwise, until such time as a contract is executed, and

(4) That the offeror shall not begin performance of the effort, or any part thereof, until such time as a contract has been awarded.

Notices to unsuccessful offerors should provide the general basis for elimination of that offeror's proposal from further competition, and should state that revisions to the unsuccessful proposal will not be considered under the instant ROA.

(d) The program office shall conduct any requested debriefings and document the proceedings in accordance with FAR 15.1003. If deemed necessary and appropriate, program office personnel may request the participation of contracting personnel in the debriefing proceedings.

(e) Upon completion of a selection decision, the program office shall furnish the following information to the awarding Contracting Activity(ies):

(1) A completed Procurement Request (DOE F 4200.33);

(2) The complete original proposal;

(3) A statement of work representing the effort to be funded and any reporting requirements relating thereto;

(4) The original selection decision document;

(5) The findings of the evaluation team;

(6) Copies of any correspondence relating to the ROA;

(7) Any recommendations regarding property to be either furnished by the Government or purchased by the contractor with Government funds as a direct charge to the contract;

(8) Indicate whether restricted data or other classified information is likely to be used or developed in performance of the effort, and specify such classification and security requirement determinations, as may be appropriate;

(9) A technical evaluation of the proposed costs to determine the realism of the type and extent of labor and materials proposed;

(10) Any other determinations or approvals that may be required by law, regulation, or Departmental directives relating to the specific research activities and which are properly the responsibility of the Program Office; and

(11) Any additional information that may assist the cognizant Contracting Activity in the negotiation, award, and administration of the contract.

[55 FR 33317, Aug. 15, 1990]

935.016-9 Responsibilities of the awarding contracting activity.

Upon receipt of the Procurement Request and the other information specified in 935.016-8(e), the awarding Contracting Activity shall:

(a) Advise the selected offeror that the Government contemplates entering into negotiations; the type of contract contemplated to be awarded; and the estimated award date, scope of the effort, and performance/delivery schedule;

(b) Send the selected offeror a draft contract, if necessary, including modifications contemplated in the offeror's statement of work, and request agreement or identification of any exceptions;

(c) Request the selected offeror to complete and/or update and return the SF 1411 (with supporting documents), the offeror representations and certifications, and other appropriate forms, as needed;

(d) Conduct negotiations in accordance with FAR subparts 15.8 and 15.9, and DEAR subparts 915.8 and 915.9, as applicable;

(e) Award a contract with reasonable promptness to the successful offeror; and,

(f) Comply with FAR subparts 4.6 and 5.3 on contract reporting and synopses of contract awards, to the extent required by those subparts.

[55 FR 33318, Aug. 15, 1990]

935.070 Contract clauses.

Insert the clause at 952.235-70, Key Personnel, in Research and Development contracts under which performance is largely dependent on the expertise of specific key personnel. To prevent administrative burden, the list should be as limited as possible.

PART 936—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 936.2—Special Aspects of Contracting for Construction

Sec.

936.202 Specifications.

Subpart 936.6—Architect-Engineer Services

936.601 Policy.
936.602-2 Evalution boards.
936.602-3 Evaluation board functions.
936.602-4 Selection authority.
936.602-70 DOE selection criteria.
936.603 Collecting data on and appraising firm's qualifications.
936.605 Government cost estimate for architect-engineer work.
936.606 Negotiations.
936.609-3 Work oversight in architect-engineer contracts.

Subpart 936.7—Standard Forms for Contracting Architect-Engineer Services and Dismantling, Demolition or Removal of Improvements

936.702 Forms for use in contracting for architect-engineer services.

Subpart 936.70—Rental of Construction Equipment

936.7000 Scope of subpart.
936.7001 General policy.
936.7002 Rental of contractor-owned equipment.
936.7002-1 Rental agreements.
936.7002-2 Rental period.
936.7002-3 Rental rates.
936.7002-4 Application of rates.
936.7002-5 Insurance.
936.7002-6 Rental limitation.
936.7002-7 Record of negotiation.
936.7002-8 Responsibility for repair and replacement.
936.7002-9 Equipment condition and inspection.
936.7003 Rental of third-party-owned equipment.
936.7003-1 Rental agreement.
936.7003-2 Rental rates.
936.7003-3 Insurance.
936.7003-4 Option to purchase equipment.

Subpart 936.71—Inspection and Acceptance

936.7100 Scope of subpart.
936.7101 Construction contracts.

Sec.

Subpart 936.72—Acquisition of Special Equipment

936.7200 Scope of subpart.
936.7201 Definition.
936.7202 Description of acquisition services.

Subpart 936.73—Outline for Equipment Rental Agreement

936.7300 Scope of subpart.
936.7301 Outline of agreement for rental of contractor-owned construction equipment.
936.7302 Outline of agreement for rental of third-party owned construction equipment.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 12016, Mar. 28, 1984, unless otherwise noted.

Subpart 936.2—Special Aspects of Contracting for Construction

936.202 Specifications.

(a) Construction specifications shall allow the use of concrete which contains fly ash as an optional or alternate material in accordance with 910.004 unless a determination is made that its use is technically unacceptable.

(b) The list of excepted supplies appearing at FAR 25.108 shall be noted in the specifications.

(c) To support all invitations for bids, plans and specifications will be available on request to all prospective bidders, including general contractors, subcontractors, and material and equipment suppliers. Where the cost of reproduction is $10 or more, the charge shall be a minimum of $10 and subject to a maximum of $500, depending upon the size of the project and the number of drawings and the volume of specifications involved. Where the cost of reproduction is less than $10, the contracting officer has authority to make distribution at cost of reproduction, or free of charge, as a particular situation dictates.

(d) No refund for the return of plans and specifications will be made except when the invitation is canceled. Under such circumstances, refund of payments will be made upon return of the plans and specifications in good condition to the issuing office.

(e) Plans and specifications will be issued without charge to such organizations as The Associated General Contractors of America, American Road Builders' Association, Dodge Reports, Blue Reports, Brown's Letters, Inc., builders and contractors exchanges in the locality in which the project is to be constructed, and others that maintain public plan display rooms.

(f) Payments received for plans and specifications shall be handled in accordance with the regulations prescribed by the General Accounting Office in sections 3020-10 and 3030 of Title 7 of GAO Manual for Guidance of Federal Agencies.

(g) If the contracting officer desires to have the architect-engineer or construction manager handle the furnishing of plans and specifications and payments therefor, the invitations for bids should so state, and the architect-engineer or construction management contract shall provide the manner in which the receipts are to be handled, generally as a credit to the contract.

(h) No charge will be made to original receivers of plans and specifications for revised sheets of drawings and revised pages of specifications which are issued by amendments to invitations.

(i) Plans and specifications may be issued in complete sets only, or in complete sets and parts of sets, as the Head of the Contracting Activity determines to be best. If less than complete sets of plans and specifications are issued, the distribution should be based on an applicant's request for specific pages and drawing sheets.

(j) When a non-refundable fee is to be charged, a provision substantially the same as 952.236-72 shall be included in the solicitation.

Subpart 936.6—Architect-Engineer Services

936.601 Policy.

To ensure the broadest publicity concerning DOE's interest in obtaining architect-engineer services, a notice of intention to contract for architect-engineer services shall be prepared and published for each acquisition of architect-engineer services, in accordance with the requirements of FAR 5.205(c) and 5.207. The submissions requested and received as part of the architect-engineer selection process differ in substance from proposals received for other types of acquisition. Consequently, the policies and procedures contained in FAR 15.412 concerning the consideration of the late responses are not applicable to proposals submitted under the provisions of this Subpart 936.6.

[49 FR 12016, Mar. 28, 1984; 49 FR 38961, Oct. 2, 1984]

936.602-2 Evaluation boards.

(a) Architect-engineer evaluation boards shall be used for the selection of professional architect-engineer services when the estimated cost of the contract is $500,000 or more. Except as provided by this subpart, the use of architect-engineer evaluation boards shall be governed by the general policies and procedures contained in FAR 36.6 and the policies concerning the selection of such contractors by board process contained in internal DOE Directives. These policies and procedures are also applicable to the selection of architect-engineers for awards of less than $500,000. However, less formal procedures and practices may be followed, depending upon the circumstances in each particular selection, at the discretion of the selecting official. The Source Selection Official, as designated in 915.612, shall establish an architect-engineer evaluation board and select the contractor.

[49 FR 12016, Mar. 28, 1984; 49 FR 38961, Oct. 2, 1984]

936.602-3 Evaluation board functions.

(a)(1) Firms indicate their general interest in providing services by annual submittal of Standard Form 254; and indicate specific interest in providing services for a particular project, in response to the public announcement, by submittal of Standard Form 255 (and Standard Form 254 if not previously submitted). Supplemental information may be solicited as a means of initiating the discussion phase of the architect-engineer selection process. This may be particularly appropriate for the larger or more complex projects where sufficient qualification and performance data are not available from the Standard Forms 254 and 255, and additional information beyond that already furnished is needed to apply the selection criteria and evaluate and rank the firms. Firms should not be requested to furnish the same information previously submitted on Standard Forms 254 and 255, nor should they be requested to submit preliminary designs, plans and drawings, except in appropriate circumstances involving design competitions.

(2) After the notice of intention to contract for architect-engineer services has been published and the date for submission of the standard forms has passed, the evaluation board and/or the selecting official shall review and evaluate the Standard Form 254 and the Standard Form 255, where applicable, submitted in response to the public announcement. Consideration should be given to requesting submission of a Standard Form 255, by qualified firms which fail to respond to the public announcement to assure adequate competition. Based on this evaluation, no less than three firms shall be selected for the purpose of holding discussions. It is not necessary to hold discussions with any firm that fails to submit a Standard Form 255, where required.

(c)(1) Normally, only those firms which are compatible with the size and complexity of the job requirements should be considered for discussions; that is, for a small, relatively simple job, firms whose resources and qualifications are far in excess of the job requirements should not be considered unless no satisfactory response is received from any other compatible highly qualified firm, and where size and simplicity of the project permit, consideration should be limited to the geographic area of the project.

(2) Every opportunity and encouragement shall be given to small business, small disadvantaged businesses and women-owned small business concerns firms. Toward this end, groups that propose to form a joint venture or engage the services of small consulting firms for portions of the effort shall be given full consideration by the evaluation board and the selection official of their combined qualifications.

(3) After three or more firms have been selected in accordance with 936.602-70, discussions shall be held with these firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services. These discussions may be used to obtain additional qualification, performance, and management data, and other information needed to properly apply the evaluation criteria and evaluate the firms under consideration.

(4) Requests for supplemental information shall not request firms to submit price proposals. Such requests can be used only to obtain information that will enable DOE to select the best qualified contractor. When a request for supplemental information is made, some wording should be included to identify it with the discussion phase of the selection process similar to the following: "As a result of our evaluation of material on file with this office and the SFs 254 and/or 255 submitted in response to Public announcement ——, we have selected your firm for further consideration for selection and award of a contract to perform the architect-engineer services which are described below. The principal purpose of this request is to obtain additional specific qualification and performance data concerning your firm."

(5) The term "discussions" includes telephone conversations, exchange of correspondence, or interviews. The term "interview" as used in FAR 5.207(d), Note 63, means "discussions" as defined above.

(d) When the evaluation board completes its functions, it shall prepare a report, including its recommendations, and submit it along with the solicitation, selection criteria, weights, and other information and documents, as may be requested, to the Source Selection Official through the Procurement Executive, or designee, when the Source Selection Official is in Headquarters. The Procurement Executive, or designee, shall arrange for appropriate Headquarters review of the report and prepare an action memorandum to the Source Selection Official for consideration in making the selection.

(e) The evaluation board's duties will ordinarily include preparation of the public announcement (936.601) and development of evaluation criteria, based on architect-engineer services requirements established by the appropriate DOE program and staff organization; development of evaluation criteria weighting; review and evaluation of Standard Forms 254 and 255; review and evaluation of information from other sources, such as appraisals of performance on previous contracts awarded to the architect-engineer firm; development of additional information requirements and conduct of discussions with firms selected for further consideration; determination of ranking of the firms evaluated; preparation of the evaluation board report and presentation of the board's findings, or recommendations, to the selecting official.

(f) The public announcement (see 936.601) covering the requirement for architect-engineer services, criteria and relative weightings, as developed by the evaluation board, shall be submitted to the Procurement Executive or designee, for appropriate review and comment prior to issuance of the announcement, where it is a Headquarters' selection or requires Headquarters' review and approval of the contract action. Commerce Business Daily announcements shall be prepared in accordance with FAR Subpart 5.2.

[49 FR 12016, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984]

936.602-4 Selection authority.

(b) Upon completion of discussions and evaluation of the firms that were selected for discussions, the board shall recommend to the selecting official, in order of preference, based upon the criteria in 936.602-70 and any special criteria included in the public announcement, no less than three firms deemed to be the most highly qualified to provide the services required. The Standard Form 255 submitted by firms with which written or oral discussions were held should be retained in selection file; all other Standard Forms 254 may be discarded 90 days after award. The selecting official shall then select the firm determined to be most highly qualified. Should the firm selected be other than that ranked highest in qualifications by the evaluation board, the selecting official shall provide complete documentation of his decision which shall become part of the contract file.

936.602-70 DOE selection criteria.

Contracting officers or architect-engineer evaluation boards shall apply the evaluation criteria contained in this subsection, as appropriate, and any special criteria developed for individual selections. When special and additional criteria are to be used, they shall be set forth in the public announcement required by 936.601, and a written justification for their use shall be placed in the DOE file maintained for the project.

(a) *General qualifications, including:*

(1) Reputation and standing of the firm and its principal members;

(2) Experience and technical competence of the firm in comparable work;

(3) Past record in performing work for DOE, other Government agencies, and private industry, including projects or contracts implemented with no overruns; performance from the standpoint of cost including cost overruns (last 5 years); the nature, extent, and effectiveness of contractor's cost reduction program; quality of work; and ability to meet schedules including schedule overruns (last 5 years) (where applicable);

(4) The volume of past and present workloads;

(5) Interest of company management in the project and expected participation and contribution of top officials;

(6) Adequacy of central or branch office facilities for the proposed work, including facilities for any special services that may be required;

(7) Geographic location of the home office and familiarity with the locality in which the project is located:

(b) *Personnel and organizations.*

(1) Specific experience and qualifications of personnel proposed for assign-

ment to the project, including, as required for various phases of the work:

(i) Technical skills and abilities in planning, organizing, executing, and controlling;

(ii) Abilities in overall project coordination and management; and

(iii) Experience in working together as a team;

(2) Proposed project organization, delegations of responsibility, and assignments of authority;

(3) Availability of additional competent, regular employees for support of the project, and the depth and size of the organization so that any necessary expansion or acceleration could be handled adequately;

(4) Experience and qualifications of proposed consultants and subcontractors; and

(5) Ability to assign adequate qualified personnel from the proposed organization (firms own organization, joint-venture organizations, consulting firms etc.) including key personnel and a competent supervising representative.

(c) Additional (or special) criteria developed for the specific project shall be considered and evaluated as may be appropriate.

936.603 Collecting of data on and appraising firms' qualifications.

(a) *Establishing offices.* DOE offices that regularly acquire architect-engineer services shall collect and maintain current qualifications and performance data files on architect-engineer firms, including information on their past experience on various types of construction projects. Normally, Standard Form 254, Architect-Engineer and Related Services Questionnaire, shall be used for this purpose. Information from other sources, such as appraisals of performance of previous projects awarded to the firm, may also be included in the files.

936.605 Government cost estimate for architect-engineer work.

(a) Prior to the initiation of negotiations, an independent Government estimate of the cost of the required architect-engineer services will be prepared based on a detailed analysis of the costs expected to be generated by the work. Consideration shall be given to the estimated value of the services to be rendered, and to the scope, complexity, and nature of the project. The independent Government estimate shall be revised as required during negotiations to reflect changes in or clarification of the scope of the work to be performed by the architect-engineer. On construction projects, a fee estimate based on the application of percentage factors to project cost estimates of the various segments of the work involved may be developed for comparison purposes, but such a cost estimate shall not be used as a substitute for the independent Government estimate.

(b) The Government estimate shall include the following information:

(1) A sufficiently detailed description and cost estimate of the work to permit an evaluation of services to be performed by the various participants and the degree of complexity of its principal components. When A-E contracts are fixed price, the information as to the work should be in more detail and on a firmer basis, particularly as to estimated costs, than for a CPFF contract. The estimated cost of the component items (including the cost of material and equipment furnished by DOE) and their descriptions, insofar as available, should be included as follows:

(i) Major buildings and other structures for which complete designs and specifications are to be prepared by the architect-engineer, including number and cost of each type, with as much information as is available (within security requirements) as to the functional requirements for such structures;

(ii) Major utilities, including classifications and costs, in as much detail as practicable;

(iii) Special equipment to be procured by a DOE operating contractor, construction contractor, or architect-engineer, or furnished by DOE;

(iv) Special equipment to be designated by the architect-engineer; and

(v) Special equipment to be installed by the construction contractor.

(2) A statement should be provided indicating total estimated cost of the work exclusive of the construction

contractor's fee, and to the extent available, identifying labor, material, and indirect costs, and any amount included for contingencies; estimated cost of architect-engineer services; and the estimated time of completion of design or construction work with an explanation of the basis for establishing the completion schedules.

(c) A written statement should be prepared which gives the extent to which the services of the architect-engineer include any of the services set forth below.

(1) Conceptual Design—Provide preliminary studies to develop a project scope that satisfies a program need, statutory requirements; validate feasibility and attainable performance levels; identify and quantify risks: Develop a reliable budget estimate and a realistic performance schedule; develop project criteria and design parameters for all engineering disciplines, identify applicable codes and standards, quality assurance requirements, environmental studies, materials of construction, space allowances, energy conservation features, health, safety, safeguards, and security requirements and any other features or requirements necessary to describe the project.

(2) Title I—Provide the necessary topographical and other field surveys, test boring, and other subsurface investigation; prepare preliminary studies, sketches, layout plans, and outline specifications; and prepare reports including estimates of cost of the proposed project and of all structures, utilities, and appurtenances thereto.

(3) Title II—Provide complete design of the work including preparation of all required preliminary and final working drawings, specifications, estimates, and contract documents; and assist in securing, analyzing, and evaluating bids or proposals for construction; and consult with DOE on all questions arising in connection with the services performed by the architect-engineer.

(4) Title III—Provide complete architect-engineer supervision and inspection of construction under the direction of a responsible representative, check shop drawings, and furnish drawings to show construction has actually been accomplished.

(5) Process design—Process design normally requires the preparation of flow diagrams showing each operating step to perform the process; material and heat balances where required; determination of the nature, capacity and design characteristics of production equipment; the general design of connecting flow lines to handle the calculated rates of product and byproduct flow; and schematic layouts.

(6) Procurement of materials and equipment (describe fully) if specified for accomplishment in conjunction with Title I, II, and III services and approved by the Procurement Executive.

(7) Other special services (describe fully) if specified for accomplishment in conjunction with Title I, II, and III services and approved by the Procurement Executive.

[49 FR 12016, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984]

936.606 Negotiations.

(a) A fixed-price contract for architect-engineer services should be used wherever it is practicable to compile, in advance of the preparation of plans and specifications, adequate information specifically describing the character and extent of services required. When there is insufficient scope information available to permit contracting for complete services (Title I, II, and III) on a fixed-price basis, and when it may be to the advantage of the Government to do so, appropriate consideration should be given to contracting only for a study contract or for the preliminary engineering (Title I), on either a reimbursable or fixed-price basis, in order to permit entering into a fixed-price contract for the remaining portion of architect-engineer service (Title II and III), based upon information developed in the first phase.

(b) The contracting officer shall request the selected architect-engineer firm to submit its price proposal with supporting cost or pricing data in accordance with FAR 15.804. Revisions of the price and supporting cost or pricing data may be made as required during negotiations to reflect changes in or clarification of the scope of work to be performed by the architect-engineer or findings derived from preaward audits conducted pursuant to FAR 15.805-5.

(f) The contracting officer shall negotiate a price considered fair and reasonable based on a comparative study of the independent Government estimate and the architect-engineer's proposal. Significant differences between elements of the two figures and between the overall figures shall be discussed and the contracting officer shall ascertain the reasons therefor. Under the authority of section 602(d)(13) and (20) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 474) as amended, contracts for architect-engineer services for former AEC functions and those of BPA now being performed by DOE shall not be limited to the six percentum fee restriction in section 304 of the Act, 41 U.S.C. 245(b).

(g) Promptly at the conclusion of each negotiation, a memorandum setting forth the principal elements of the negotiation shall be prepared in accordance with the requirements of FAR 15.808, for use by the reviewing authorities and for inclusion in the contract file. The memorandum shall contain sufficient detail to reflect the significant considerations controlling the establishment of the price and other terms of the contract.

936.609-3 Work oversight in architect-engineer contracts.

In addition to the clause at FAR 52.236-24, the contracting officer shall insert the clause at 952.236-71 in architect-engineer contracts.

Subpart 936.7—Standard Forms for Contracting Architect-Engineer Services and Dismantling, Demolitation or Removal of Improvements

936.702 Forms for use in contracting for architect-engineer services.

(a) The contracting officer shall also include the additional terms at 952.236-70 in Standard Form 252 item 6.

Subpart 936.70—Rental of Construction Equipment

936.7000 Scope of subpart.

This subpart sets forth general policy and instructions which shall be applied to rental of construction equipment for use by DOE contractors with cost-reimbursement type contracts.

936.7001 General policy.

(a) It is the policy of the DOE to use presently owned DOE construction equipment to the fullest extent. Careful investigation shall be made of the equipment available, not only at the field office concerned, but at other field offices, to determine whether such equipment can be economically utilized on the job. The Procurement Executive or designee, can assist in the investigation of excess equipment available in other offices.

(b) It is the policy of the DOE to rent construction equipment, where available, rather than purchase it, unless in the case of third-party-owned equipment, the contracting activity determines that accrued rentals on a particular item of equipment will approximate the cost of ownership of it except, however, that individual items of construction equipment having an original cost of less than $1,000 ordinarily should be purchased and not rented. Where it is clearly to the advantage of the Government, items having a cost of less than $1,000 may be rented with the approval of the Head of the Contracting Activity. Whenever it is practical, cost and other factors considered, Contractor-owned equipment shall be rented in preference to renting third-party-owned equipment.

(c) It is the policy of the DOE to pay rental for construction equipment at rates not higher than those prevailing in the locality, except under unusual circumstances, and at as low a rate as is consistent with securing modern equipment in good operating condition. Costs of repair, job interruption due to poor equipment, transportation and in-transit rental may well offset any apparent savings in rental rates. Rental paid shall be subject to any

best copy available

Government price ceiling regulations that may be in effect.

936.7002 Rental of contractor-owned equipment.

936.7002–1 Rental agreements.

The terms and conditions governing rental by DOE of construction equipment from a cost-type construction contractor are set forth in 936.7301. Outline of agreement for rental of contractor-owned construction equipment. This form of agreement is designed for use as an appendix to a DOE cost-type construction contract. It may be modified for rental of equipment under other contractual arrangements and it may be modified for use as a separate contract or as an attachment to a subcontract. Some of the aspects of this agreement to which particular attention should be given are set forth in 936.7002–2 through 936.7002–9.

936.7002–2 Rental period.

The base rental period shall extend from the time the equipment is accepted at the job site until the contractor is notified in writing by DOE's representative that the equipment is no longer required. Subject to applicable limitations covered in the rental agreement form, the contractor shall be paid rental during the in-transit time and during the time required for equipment repair or replacement prior to return to the contractor.

936.7002–3 Rental rates.

(a) Rates for rental of contractor-owned equipment shall be fair and equitable. The rental rates contemplate that the DOE will pay incoming and outgoing transportations costs and rental during in-transit time for both inbound and outbound transportation of equipment; however, terms more favorable to DOE may be negotiated where appropriate. The rental rates to be paid for the use of contractor-owned equipment under normal conditions should not exceed 65 percent of the rates quoted in the latest edition of the Associated Equipment Distributor's (A.E.D.) "Compilation of Average Rental Rates for Construction Equipment." However, Heads of Contracting Activities may approve rates in excess of 65 percent of the current A.E.D. schedule when local conditions require higher rates. When it becomes necessary as a general practice to exceed 65 percent of the current A.E.D. schedule, Heads of the Contracting Activities shall be advised.

(b) For items of equipment that are not covered by the A.E.D. schedule, use the latest edition of "Contractors' Equipment Ownership Expense" document published by the Associated General Contractors of America, Inc., and information on prevailing local rates for developing rates that would be consistent with the 35 percent reduction of the A.E.D. rates (i.e., taking into consideration the expenses paid by the Government under the rental agreement).

[49 FR 12016, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984]

936.7002–4 Application of rates.

(a) Rental rates shall be based upon one shift of 8 hours per day, 40 hours per week, or 176 hours per month of a 30-consecutive-day period.

(b) The monthly rental rate and its pro-rata share shall apply to all rental periods of 1 month or more. The weekly rate and its pro-rata shall apply to all rental periods of 1 week or more up to 1 month. The daily rate and its pro-rata shall apply to all rental periods up to 1 week.

(c) Inasmuch as there are certain elements of cost to an equipment owner which do not change even though the equipment is used on more than one shift per day, it is believed equitable to pay a lower rental rate during a second and third shift than would be paid during a single shift. Therefore, the rental agreement form provides for payments for overtime at a rate equal to one-half the rate for the first shift.

936.7002–5 Insurance.

(a) Generally, rental rates should include the cost of insurance or self-insurance covering loss of or damage to the equipment during rental periods. The rental agreement for contractor-owned equipment is so worded.

(b) However, if the contracting officer determines that it is not practical to include the cost of such insurance in the rental rates, paragraphs 3(d) and 7(a) shall be amended as indicated in the applicable notes following these paragraphs in 936.7301.

936.7002-6 Rental limitation.

The rental agreement form provides that when the total amount of rental paid to the contractor for any one unit of equipment equals 75 percent of the mutually agreed value of that unit, as set forth in the initial inspection report, the equipment is to remain available for the work under the construction contract as long as it will be required without any further rental payments to the contractor. The rental ceiling of 75 percent of the agreed-upon value of the equipment applies to all rental paid, including rental paid during in-transit time to and from the site of the work and down time from any operating repairs or restoring of the equipment after it is no longer needed at the site. The purpose of the provision is to prevent the Government from paying rental in excess of the contractor's investment, and is included in lieu of an "option to purchase" clause. Once a particular piece of equipment has been released, the contractor will be required to return it to the job under the original rental period.

936.7002-7 Record of negotiation.

A record of negotiation shall set forth the information used to determine the reasonableness of the rental rates, including a breakdown of the contractor's equipment ownership expense, similar to that itemized in the Associated General Contractors of America's document, "Contractors' Equipment Ownership Expense."

936.7002-8 Responsibility for repair and replacement.

The rental agreement describes the responsibilities of the parties with respect to maintenance and repair necessary to the operation of the rented equipment, or replacement of such equipment. The DOE's responsibility includes repairs resulting from normal wear and tear, provided they were necessary in order to continue the equipment in service. However, when the equipment is no longer required on the job, the extent of the DOE's obligation is only to return the equipment to the contractor in as good operating condition as when received, less wear and tear.

936.7002-9 Equipment condition and inspection.

(a) Construction equipment shall be given a rigid and detailed inspection by representatives of the DOE and, at the contractor's option, by representatives of the contractor, before its shipment and acceptance or use on the job. Equipment shall be inspected under actual workloads insofar as practicable. In cases where it is not practical to inspect equipment prior to its shipment to the job site, the contractor should be informed of the extent of inspection and the expected condition of his equipment in the event the equipment does not meet required standards. The transportation, rental, or any other expenses shall be paid by DOE unless, at contractor's expense, the equipment is repaired to acceptable standards in a reasonable length of time. A similar inspection shall be made immediately prior to scheduled return shipment of an item of equipment.

(b) A detailed inspection report shall be signed by each representative inspecting. The initial inspection report shall be used at the time of release as a basis of determining the repairs necessary to place the equipment in as good operating conditions as when accepted less normal wear and tear. After necessary repairs are completed, a final inspection report shall be completed by a representative of the DOE and, at his option, the contractor.

(c) If initial detailed inspection discloses that the condition of the equipment is doubtful, arrangements should be made with the contractor for a trial period of operation to prove the equipment, with provisions that if equipment is found unacceptable in the trial period, no rental, transportation, or other expenses will be due the contractor. Repairs to equipment which fails in service due to defects not reasonably ascertainable on initial inspection shall be at the contractor's expense.

[49 FR 12016, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984]

936.7003 Rental of third-party-owned equipment

936.7003-1 Rental agreement.

The terms and conditions governing rental of construction equipment from a third party which does not operate the equipment are in accordance with 936.7002-2, 936.7002-4, 936.7002-8, and 936.7002-9, and the following subsections of this part, and are set forth in 936.7302, Outline of agreement for rental of third-party-owned construction equipment. Heads of Contracting Activities shall assure that these terms and conditions are used by DOE cost-reimbursement construction contractors and that similar terms and conditions are used by other DOE cost-reimbursement contractors or subcontractors in renting construction equipment from a third party. These terms and conditions may be suitably modified to provide for rental of equipment with operators. Some of the aspects of this agreement to which particular attention should be given are set forth in the next three subparts.

936.7003-2 Rental rates.

Third-party equipment shall be rented on the basis of competitive bids, rental rates, transportation costs, and other factors being considered. The rental specifications shall be based on the circumstances of a particular case, including the length of rental period, the availability of equipment in certain localities, and the work requirements.

936.7003-3 Insurance.

The provisions of 936.7002-5(a) also apply to the rental of construction equipment from a third party. However, if the contracting officer determines that the rental rates are not to include the cost of insurance or self-insurance covering loss of or damage to the equipment, the rental agreement shall reflect this condition.

936.7003-4 Option to purchase equipment.

When accrued rentals on a particular item of equipment will likely approximate the appraised value of equipment and a decision has been made not to purchase in accordance with 936.7001(b), consideration shall be given to including in the rental agreement, an option to purchase the equipment.

Subpart 936.71—Inspection and Acceptance

936.7100 Scope of subpart.

This subpart implements and supplements FAR Part 36 by prescribing the policies and requirements for inspection and acceptance under construction contracts.

936.7101 Construction contracts.

(a) Inspection services may be performed by the architect-engineer responsible for the design. Inspection services may not be procured from a construction contractor with respect to its own work.

(b) When one contractor is to inspect the work of another, the inspection contractor will be given written instructions defining its responsibilities and stating that it is not authorized to modify the terms and conditions of the contract, to direct additional work, to waive any requirements of the contract, or to settle any claim or dispute. Copies of the instructions will be given to the contractor who is to be inspected, with a request to acknowledge receipt on a copy to be returned to the contracting officer. In this manner, both contractors are on express notice of the authority and limitations of the authority of the inspecting contractor.

Subpart 936.72—Acquisition of Special Equipment

936.7200 Scope of subpart.

Contracts for acquisition services only are rarely used. Acquisition of special equipment is generally contracted for in conjunction with CPFF contracts for construction, operating, or architect-engineer services. In special situations, acquisition of other equipment and construction materials is also contracted for in conjunction with CPFF contracts for operating or architect-engineer services. The description of acquisition services in paragraph (936.7202) of this section is applicable to all of these cases.

936.7201 Definition.

Special equipment is equipment for which the purchase price is of such a magnitude compared to the cost of installation as to improperly reflect the amount of technical direction and management effort required of the contractor. Generally, special equipment is considered to be a capital-asset-type of equipment (typically, equipment costing more than $1,000 and having a service life of more than two years) for which the cost of installation and handling (including unloading, hauling and warehousing) is 5 percent or less, of the purchase price of the equipment. However, the determination of specific items of equipment in this category requires application of judgment and careful study of the circumstances involved for each project. This category of equipment would generally include items such as:

(a) Major items of prefabricated process or research equipment.

(b) Major items of preassembled equipment such as packaged boilers, generators, machine tools, and larger electrical equipment. In some cases it would also include special apparatus or devices such as reactor vessels and reactor charging machines.

936.7202 Description of acquisition services.

(a) Acquisition as herein considered is an activity involving judgment, knowledge, and experience relating to the manufacture, use, or application of the article or process to be purchased. It may include the development or location of sources of supply, and generally includes preparation of bidding documents, solicitation of proposals, analysis of proposals received (including, where necessary, technical and sometimes complicated evaluation of performance characteristics of the equipment of different manufacturers), inspection at manufacturer's plant as distinguished from inspection supplied under Title III services of an architect-engineer contract, and evaluation of production capacities to meet required delivery. Acquisition includes necessary coordination with participating contractors and DOE for especially designed equipment, general and specific expediting, and special assistance to the manufacturers in helping to locate scarce materials and machine tools and in supporting allocation for critical materials where this is a necessary function. Acquisition normally includes inspection and receiving upon delivery at the site (this may be a joint activity where the contracting agent is not the constructor) and payment. All on-site physical activities after delivery, including unloading, warehousing, hauling, and installation are considered a construction activity and not acquisition.

(b) Coordination, timing, and technical know-how are important factors to be considered in the selection of a contracting agent. The advantages and disadvantages of placing full responsibility in one contractor for construction and acquisition, or split responsibility where the acquisition is placed under a contract with architect-engineer or operating contractor, should be evaluated in the light of the above factors.

Subpart 936.73—Outline for Equipment Rental Agreement

936.7300 Scope of subpart.

This subpart contains agreement formats which are suggested for use where DOE rents construction equipment from a prime cost-type construction contractor, or third-party-owned equipment. The outline for rental from the prime contractor is designed for use as an appendix to the prime cost-type construction contract. The format for use with third parties is an agreement within itself.

936.7301 Outline of agreement for rental of contractor-owned construction equipment.

Attached to and made a part of Contract No. ———.

Contractor: ———.

The following provisions shall govern the use and rental of the Contractor's construction plant and equipment (hereinafter called the "equipment") under the contract:

1. *Equipment rented.* The Contractor agrees to furnish for his own use in the performance of the contract the equipment itemized in Schedule 1 (attached to and made part of this agreement). Each item of the equipment shall be clearly marked with the identification number assigned to it on Schedule 1. the Contractor and DOE may from time to time amend Schedule 1 by deleting items or adding items.

2. *Payments.* As provided in the clause of the contract entitled "Allowable Cost and Payment," the allowable costs of the performance of the contract shall include:

(a) Rental. Rental of equipment, for rental periods determined in accordance with paragraph 4 and at the rates set forth in Schedule 1 applied in accordance with paragraph 3.

(b) Transportation. Transportation of equipment in accordance with paragraph 5.

(c) Repair. Maintenance, repair, and replacement of equipment to the extent provided in paragraphs 6 and 7.

Payment shall be made in accordance with procedures set forth in the clause of the contract entitled "Allowable Cost and Payment."

3. *Application of rates.* The rates set forth in Schedule 1 shall be applied in accordance with the following rules:

(a) Basis of rates. The rates are based upon one shift of 8 hours per day, 40 hours per week, or 176 hours per month (of 30 consecutive days).

(b) Apportionment of rates. The monthly rate and its pro-rata share shall apply to all rental periods of 1 month or more. The weekly rate and its pro-rata share shall apply to all rental periods of 1 week or more up to one month. The daily rate and its pro-rata share shall apply to all rental periods up to 1 week.

(c) Overtime. If the equipment is rented by the day, the rate for overtime is one-sixteenth ($1/16$) of the daily rate for each hour of use in any day in excess of 8 hours; if it is rented by the week, the rate for overtime is one-eightieth ($1/80$) of the weekly rate for each hour of use in any week in excess of 40 hours; and if it is rented by the month, the overtime rate is one-three hundred and fifty-second ($1/352$) of the monthly rate for each hour of use in excess of 176 hours in any one 30 consecutive day period.

(d) Insurance. Rental rates include the cost of insurance or self-insurance covering loss of or damage to the equipment during rental periods, as indicated in Schedule 1 and copy of policy attached. The Contractor agrees to maintain this insurance coverage for loss of or damage to the equipment during the entire term of this agreement. The Contractor shall waive any right of action against the government to the extent that loss is recovered from insurance applicable to loss, damage or destruction of leased equipment.

NOTE: *When rental rates do not include the cost of insurance or self-insurance, substitute the following text for paragraph (d):*

"Rental rates do not include any factor representing the cost of insurance or self-insurance covering loss of or damage to the equipment during rental periods."

4. *Rental period.* The rental period for which rental is payable for an item of equipment shall consist of a base period, beginning upon the date stipulated in a written notice from the contracting officer to the Contractor that DOE has accepted the item of equipment at the job site, and ending upon the date stipulated in a written notice from the contracting officer to the Contractor that use of the item of equipment is terminated, subject to the following additions, deductions, and conditions:

(a) In-transit time. There shall be added to the base period:

(1) The actual in-transit time of inbound transportation from one point of shipment to the job site, not exceeding the time required for such transportation by commercial carrier via the most expeditious routing available, of any item of equipment subsequently accepted by DOE and

(2) The actual in-transit time of outbound return transportation from the job site, to the original point of inbound shipment, or other destination at equal or less distance from the job site, not exceeding the time required for such transportation by commercial carrier via the most expeditious routing available, of any item of equipment whose use has been terminated by DOE.

(b) Delay due to repairs.

(1) The time required for repair of equipment shall be deducted from the base period if such repair is necessitated by willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, or made necessary by defects not reasonably ascertainable on initial inspection by DOE.

(2) If an item of equipment has been accepted by DOE, the subsequent withdrawal by the Contractor of such item from the work for necessary repairs (due to causes other than those mentioned in the preceding paragraph) shall not interrupt the running of the base period unless the contracting officer finds that the Contractor has not exercised due diligence in effecting the repairs or in returning the item to use, and in such event the time which the contracting officer finds to have been excessive shall be deducted from the base period.

(c) Time for repairs on termination. In the event DOE, in accordance with paragraph

6(c), elects to effect repair or replacement of an item of equipment prior to scheduled return shipment, the time required for such repair or replacement shall be added to the base period.

(d) Trial period. If initial inspection by DOE discloses that the condition of an item of equipment is doubtful, it will not be accepted by DOE without a trial period of operation to prove such item, upon terms and conditions agreed upon by the Contractor and DOE. If the equipment is found unacceptable in the trial period, no rental, transportation, or other expenses will be due the Contractor.

(e) Rental limitation. When the aggregate of rental paid for an item of equipment equals 75 percent of its appraised value, as agreed upon by the Contractor and the contracting officer at or prior to the time of acceptance by DOE and set forth in the initial inspection report, the rental period shall cease as to such item for purposes of rental payment. Such item shall thereafter remain available for use under the contract without further rental payments but otherwise in accordance with the terms and conditions of this agreement, until the contractor receives written notice from the contracting officer that use of the item is terminated. The limitation of rental to 75 percent of the agreed value shall apply to the total of all rental due under this paragraph 4. A failure to agree as to the value of an item of equipment shall be deemed to be a dispute within the meaning of the article of the contract entitled "disputes."

5. *Transportation.* Inbound transportation of equipment, f.o.b. cars from the original point of shipment to the job site, and outbound return transportation of shipment f.o.b. cars to the original point of shipment or to another destination selected by the Contractor at equal or less distance from the job site, shall be at the expense of the Government, subject to the following conditions:

(a) Limitation on return transportation. The Government shall not bear any expense for outbound return transportation in excess of the amount paid for inbound transportation to the job site, except additional amounts representing or equivalent to increase in freight rates applicable to the route to the original point of shipment.

(b) Limitation on long distance transportation. Transportation over a distance in excess of 500 miles shall be subject to the approval of the contracting officer.

(c) Transportation by other than common carrier. The expense borne by the Government hereunder for transportation by a method other than common carrier shall be the actual expense of such transportation as shown by evidence satisfactory to the contracting officer.

(d) Loading and unloading. Only such costs of loading and unloading equipment as are incurred at the job site shall be borne by the Government.

(e) Equipment not in required condition. The Government shall not bear the expense of transportation of any item of equipment which arrives at the job in a condition which does not fulfill the requirements of paragraph 6(a) and which is not placed in the condition required under paragraph 6(a) by the Contractor at the Contractor's expense within a reasonable time.

6. *Condition of equipment.* The following conditions apply.

(a) Condition on delivery. The equipment shall, on delivery at the job site, be in good operating condition to render efficient, economical, and continuous service, and shall be equipped with necessary and required safety devices according to ICC regulations and other applicable Federal and State laws. Each item of the equipment shall have been registered by the Contractor at the Contractor's own expense with all Federal, State, and local authorities requiring registration, and registration plates or other evidence of registration shall be displayed in accordance with the requirements of the registering authority. The cost of subsequent registration shall also be borne by the Contractor. If any item of equipment on arrival at the job site is not placed in the condition required by this paragraph within a reasonable time, the contracting officer may reject the item and require its removal from the job site, and in that event, the Government shall not be liable for rental, transportation, or any other expense in connection with such item.

(b) Condition on the job. Equipment accepted by DOE shall be maintained by the Contractor in the condition required for its operation until use of the equipment is terminated by the contracting officer. Maintenance and repair required to keep accepted equipment in such condition during such time and replacement (at the agreed value set forth in the initial inspection report, less depreciation) of accepted equipment lost or destroyed during such time, shall be at the expense of the Government unless such maintenance, repair, or replacement is made necessary by loss or damage covered by any policy of insurance (or self-insurance), or caused by willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, or is made necessary by defects not reasonably ascertainable on initial inspection of DOE.

(c) Condition on termination. Upon termination by DOE of the use of any item of equipment, the item shall be returned by DOE to the Contractor at the job site in as good condition as when received by DOE (as shown by the initial inspection report) less normal wear and tear, except for any loss or damage which is due to willful misconduct or lack of good faith on the part of the Contractor's mangerial personnel, or defects not reasonably ascertainable on initial inspection by DOE, or which is covered by any policy of insurance (or self-insurance). If the inspection report to be made immediately prior to the scheduled return shipment of an item of equipment discloses the necessity for repairs or replacement the cost of which is the responsibility of the Government under this paragraph, DOE may at its election either (A) effect such repairs or replacements or (B) allow the Contractor the agreed estimated reasonable cost of such repairs (or the agreed value set forth in the initial inspection report, less depreciation, if replacement is required), and a sum in lieu of rental for the time estimated by the contracting officer to be necessary for such repairs. Failure to agree as to the estimated reasonable cost of affecting such repairs or replacement under (C) above, shall be deemed to be a dispute within the meaning of the article of the contract entitled "Disputes."

(d) Inspection. For the purpose of establishing the condition of the equipment, each item of equipment shall be inspected, tested and inventoried by representatives of DOE and at the Contractor's option, together with representatives of the Contractor, prior to its acceptance by DOE and also immediately prior to scheduled return shipment. The results of such inspections and tests, and the inventories compiled, shall be incorporated in reports submitted to the contractor and to the contracting officer. For any item of equipment which the Contractor has failed to inspect, test, and inventory, or has failed to report as provided herein, the Contractor agrees that the report submitted hereunder by a representative of DOE shall be conclusive evidence of the condition as of the date of inspection.

(e) Excessive repairs. The contracting officer may deduct from payments otherwise due the Contractor, any amounts previously allowed the Contractor under this agreement for repairs made at the Government's expense which the contracting officer finds to have been in excess of the requirements of this agreement.

7. *Protection of equipment—steps to be taken in event of loss.* The following apply.

(a) The Contractor shall take all reasonable and necessary precautions to safeguard and protect the equipment. Any loss of or damage to the equipment is not reimbursable to the extent that such loss or damage is required to be covered by insurance under paragraph 3(d) of this agreement.

NOTE: *When paragraph 3(d) of the agreement provides that rental rates do not include any factor representing the cost of insurance or self-insurance covering loss of or damage to the equipment during rental periods, the following paragraph (a) shall be used*

(a) The Contractor shall take all reasonable and necessary precautions to safeguard and protect the equipment. Any loss or damage to the equipment will be at the Contractor's risk to the extent that such loss or damage is covered by any policy of insurance (or self-insurance).

(b) Upon the happening of any loss or damage which is at the risk of the Government under this agreement, the Contractor shall immediately notify the contracting officer of the occasion and extent thereof, shall at the contracting officer's request effect an assignment and subrogation in favor of the Government of all the Contractor's rights and claims (except those against the Government) arising out of any such loss or damage, shall, if required by the contracting officer, authorize representatives of the Government to settle or prosecute to final judgment any such claims, and shall furnish to the Government on request all reasonable assistance in obtaining recovery.

8. *Liquidation of indebtedness.* The Contractor warrants full and complete title and right to possession of all the equipment, subject only to those liens, encumbrances or claims to title or possession securing the indebtedness detailed on Schedule 1, Part 2. The Contractor agrees to apply such portion of the rental payment hereunder as may be necessary for the prompt discharge of such indebtedness. If at any time any person holding a lien, encumbrance, or claim against any item of equipment shall submit to DOE evidence that the Contractor is not discharging the indebtedness secured thereby in accordance with the terms under which the indebtedness is payable or dischargeable, DOE shall have the right upon three day's written notice to the Contractor to impound such part of the unpaid rental hereunder, as DOE in its sole discretion deems necessary, until the rights of the Contractor and any such person are determined and all just and proper claims of such persons are satisfied, provided, that nothing contained in this paragraph shall be construed to pay to such person any sum not required to be paid by the terms under which the indebtedness was incurred or to pay any sum prior to the time it becomes due.

9. *Taxes.* Unless otherwise directed by the contracting officer, the Contractor shall at the Contractor's own expense pay and discharge any and all taxes levied upon any item of the equipment.

SCHEDULE 1

Part 1—Items and Rental Rates

Item No. ____________________

Item description (equipment No.; type of equipment; serial No.; manufacturer; year of model; original point of shipment; etc.)

Description of any insurance coverage for loss or damage to equipment ————

Item Rental Rates————————

Attach certified copy of insurance policy.

(Continue, if necessary, on reverse side or on separate sheets.)

Part 2—Liens, Encumbrances and Claims

The following is a complete and correct statement of the amount of any and all indebtedness secured by liens or other encumbrances of any nature, legal or equitable, which are held by any person, firm or corporation against the equipment, items Nos. 1 through ———.

(Contractor) ————.
By ————.
(Title) ————.
Item No. ————————

Name and address of present creditor ———

Present unpaid balance ————————

Amounts and date of future payments ———

(Continue, if necessary, on the reverse side or on separate sheets.)

[49 FR 12016, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984]

936.7302 Outline of agreement for rental of third-party-owned construction equipment.

This agreement, made and entered into this ——— day of ———, 19———, by and between ——— ——— ("hereinafter called the lessor") and ———) (hereinafter called the "lessee") Witnesseth:

Whereas, the lessee has entered into a contract, dated ———, (hereinafter called the "construction contract"), with the United States of America (hereinafter called the "Government"), represented by the U.S. Department of Energy hereinafter called "DOE"), for the performance of certain construction work in connection with the construction at ———; and

Whereas, the lessor is the owner of certain construction plant and equipment (hereinafter called the "equipment"), listed on the attached Schedule 1 attached to and made a part of this agreement, and

Whereas, the lessee desires to rent the equipment for use in performing the construction contract.

Now, therefore, in consideration of the mutual covenants and conditions herein set forth, it is agreed as follows:

Article I—Equipment rented. The lessor agrees to furnish for use by the lessee in the performance of the construction contract the equipment itemized in Schedule 1 at time specified as follows:

(Each item of equipment shall be clearly marked with the identification number assigned to it on Schedule 1. The lessor and the lessee may from time to time amend Schedule 1 by deleting or adding items.)

Article II—Payments. Payments shall be made by the lessee to the lessor at monthly intervals on invoices rendered by the lessor for:

(a) *Rental.* Rental of equipment, for rental periods determined in accordance with the article entitled "Rental Period" and at the rates set forth in Schedule 1 applied in accordance with the article entitled "Application of Rates."

(b) *Transportation.* Transportation of equipment in accordance with the article entitled "Transportation."

(c) *Repair.* Maintenance, repair, and replacement of equipment to the extent provided in the articles entitled "Conditions of Equipment" and "Protection of Equipment—Steps to be Taken in Event of Loss."

Article III—Application of rates. The rates set forth in Schedule 1 shall be applied in accordance with the following rules:

(a) *Basis of rates.* Rates are based upon one shift of 8 hours per day, 40 hours per week, or 176 hours per month (30 consecutive days).

(b) *Apportionment of rates.* The monthly rate and its pro-rata share shall apply to all rental periods of 1 month or more. The weekly rate and its pro-rata share shall apply to all rental periods of 1 week or more up to 1 month. The daily rate and its prorata share shall apply to all rental periods up to 1 week.

(c) *Overtime.* If the equipment is rented by the day, the rate for overtime is one-sixteenth ($1/16$) of the daily rate for each hour of use in any day in excess of 8 hours; if it is rented by the week, the rate for overtime is one-eightieth ($1/80$) of the weekly rate for each hour of use in any week in excess of 40 hours; and if it is rented by the month, the overtime rate is one-three hundredth and fifty-second ($1/352$) of the monthly rate for hour of use in excess of 176 hours in any one 30-consecutive-day period.

(d) *Insurance.* Rental rates include the cost of insurance or self-insurance covering loss of or damage to the equipment during rental periods as indicated in Schedule 1 and copy of policy attached. The lessor agrees to maintain this insurance coverage for loss or damage to the equipment during the entire term of this agreement. The lessor shall waive any right of action against the contractor or the United States Government for loss, damage or destruction of the leased equipment to the extent that the lessor recover from insurance applicable to loss, damage or destruction of the leased equipment.

NOTE: *When rates do not include the cost of insurance or self-insurance, substitute the following text for paragraph* (d) *Insurance:*

"Rental rates do not include any factor representing the cost of insurance or self-insurance covering loss of or damage to the equipment during rental periods."

Article IV—Rental period. The rental period for which rental is payable for an item of equipment shall consist of a base period, beginning upon the date stipulated in a written notice from the lessee to the lessor that the lessee has accepted the item of equipment at the job site, and ending upon date stipulated in a written notice from the lessee to the lessor that use of the item of equipment is terminated, subject to the following additions, deductions, and conditions.

(a) *In-transit time.* There shall be added to the base period:

(1) The actual in-transit time of inbound transportation from the point of shipment to the job site, not exceeding the time required for such transportation by commercial carrier via the most expeditious routing available, of any item of equipment subsequently accepted by the lessee.

(2) The actual in-transit time of outbound return transportation from the job site to the original point of inbound shipment, or other destination at equal or less distance from the job site, not exceeding the time required for such transportation by commerical carrier via the most expeditious routing available, of any item of equipment whose use has been terminated by the lessee.

(b) *Trial period.* If initial inspection by the lessee discloses that the condition of an item of equipment is doubtful, it will not be accepted by the lessee without a trial period of operation to prove such item upon terms and conditions agreed upon by the lessor and the lessee and approved by DOE. If the equipment is found unacceptable in the trial period, no rental, transportation, or other expenses will be due the lessor.

(c) *Delay due to repairs.*

(1) The time required for repair of equipment shall be deducted from the base period if such repair is necessitated by willful misconduct or lack of good faith on part the of the lessor, of an individual, or the partners or corporate officers of the lessor, or a supervising representative of the lessor, or made necessary by defects not reasonably ascertainable on initial inspection by the lessee.

(2) If arrangements are made for the lessor to repair an item of equipment, the withdrawal of such item from work for necessary repairs (due to causes other than those mentioned in the preceding paragraph) subsequent to acceptance of the item by the lessee shall not interrupt the running of the base period, unless the lessee or DOE finds that due diligence in effecting the repairs or in returning the item to use has not been exercised. In the latter event, the time found to have been excessive shall be deducted from the base period.

(d) *Time for repairs on termination.* In the event the lessee, in accordance with the article entitled "Condition of Equipment," elects to effect repair or replacement of an item of equipment prior to scheduled return shipment of the item, the time required for such repair or replacement shall be added to the base period.

Article V—Transportation. Inbound transportation of equipment to the job site, f.o.b. cars and return to the original point of shipment or to another destination selected by the lessor at equal or less distance from the job site, shall be at the expense of the lessee, subject to the following conditions:

(a) *Limitation on return transportation.* The lessee shall not bear any expense for outbound return transportation in excess of the amount paid for inbound transportation to the job site, except additional amounts approved by DOE representing or equivalent to increase in freight rates applicable to the route to the original point of shipment.

(b) *Limitation on long distance transportation.* Transportation over a distance in excess of 500 miles shall be subject to the approval of the lessee and DOE.

(c) *Transportation by other than common carrier.* The expense borne by the lessee hereunder for transportation by a method other than common carrier shall be the actual expense of such transportation as shown by evidence satisfactory to the lessee and DOE, but shall in no case exceed the amount which would be paid for such transportation by a suitable and available common carrier, unless otherwise authorized by the lessee and DOE.

(d) *Loading and unloading.* Only such costs of loading and unloading equipment as are incurred at the job site shall be borne by the lessee.

(e) *Equipment not in required condition.* The lessee shall not bear the expense of transportation of any item of equipment which arrives at the job site in a condition which does not fulfill the requirements of the article entitled "Condition of equipment" and which is not placed in the condition required under that article by the lessee at the lessor's expense within a reasonable time.

Article VI—Condition of equipment.

(a) *Condition on delivery.* The equipment shall, on delivery at the job site, be in good operating condition to render efficient, economical, and continuous service and shall be equipped with necessary and required safety devices according to ICC regulations and other applicable Federal and state laws. Each item of the equipment shall have been registered by the lessor at the lessor's own expense with all Federal, State, and local authorities requiring registration, and registration plates or other evidence of registration shall be displayed in accordance with the requirements of the registering authority. The cost of subsequent registration shall also be borne by the lessor. If any item of equipment on arrival at the job site is not in the condition required by this paragraph, its use on the work shall not be permitted unless and until it is placed in the condition required by this paragraph at the lessor's expense and within a reasonable time. If any such item is not placed in the condition required by this paragraph within a reasonable time, the lessee may reject the item and require its removal from the job site, and in that event, the lessee shall not be liable for rental, transportation, or any other expense in connection with such item.

(b) *Condition on the job.* Maintenance and repair necessary to keep accepted equipment in the condition required for its operation until use of the equipment is terminated by the lessee, and replacement (at the value agreed upon by the lessor and the lessee with the approval of DOE at or prior to the time of acceptance by the lessee and set forth in the initial inspection report, less depreciation) of accepted equipment, lost or destroyed during such time, shall be at the expense of the lessee. Except, however, such maintenance, repair, or replacement will not be at the expense of the lessee if it is made necessary by loss or damage covered by any policy of insurance (or self-insurance), or caused by willful misconduct or lack of good faith on the part of the lessor, of an individual, or the partners or corporate officers of the lessor, of a supervising representative of the lessor, or is made necessary by defect not reasonably ascertainable on initial inspection by the lessee.

(c) *Condition on termination.* Upon termination by the lessee of the use of any item of equipment, the item shall be returned by the lessee to the lessor at the job site in as good conditions as when received by the lessee (as shown by the initial inspection report), less normal wear and tear, except for any loss or damage which is due to willful misconduct or lack of good faith on the part of the lessor, of an individual, or the partners or corporate officers of the lessor or a supervising representative of the lessor, or defects not reasonably ascertainable on initial inspection by the lessee, or which is covered by any policy of insurance (or self-insurance). If the inspection report is to be made immediately prior to the scheduled return shipment of an item of equipment discloses the necessity for repairs or replacements, the cost of which is the responsibility of the lessee under this paragraph, the lessee may, at its election, either (1) effect such repairs or replacements, or (2) with the approval of DOE, allow the lessor the agreed estimated reasonable cost of such repairs (or the agreed value less depreciation, if replacement is required), and a sum in lieu of rental for the time estimated by the lessee to be necessary for such repairs.

(d) *Inspection.* For the purpose of establishing the condition, the equipment shall be inspected, tested, and inventoried by representatives of the lessee and, at the lessor's option, together with representatives of the lessor (and of DOE, if DOE so elects), prior to its acceptance by the lessee and immediately prior to scheduled return shipment. The results of such inspections and tests, and the inventories compiled, shall be incorporated in reports submitted to the lessor and to the lessee (and to DOE if DOE so requires). For any item of equipment which the lessor has failed to inspect, test, and inventory, or has failed to report as provided herein, the lessor agrees that the report submitted hereunder by a representative of the lessee shall be conclusive evidence of the condition as the date of inspection.

(e) *Excessive repairs.* DOE may require the lessee to deduct from payments otherwise due the lessor any amounts previously allowed the lessor under this agreement for repairs made at the lessee's expense which DOE finds to have been in excess of the requirements of this agreement.

Article VII—Protection of equipment—Steps to be taken in event of loss.

(a) The lessee shall take all reasonable and necessary precautions to safeguard and protect the equipment. Any loss of or damage to the equipment will be at the lessor's risk to the extent that such loss or damage is required to be covered by insurance under Article III(d) of this agreement.

NOTE: When Article III(d) of the agreement provides that rental rates do not include any factor representing the cost of insurance or self-insurance covering loss of or damage to the equipment during rental periods, the following paragraph (a) shall be used:

"(a) The lessee shall take all reasonable and necessary precautions to safeguard and protect the equipment. Any loss of or damage to the equipment will be at the lessor's risk to the extent that such loss or damage is covered by any policy of insurance (or self-insurance)."

(b) Upon the happening of any loss or damage which is at the risk of the lessee under this agreement, the lessee shall immediately notify the lessor of the occasion and extent thereof, and the lessor shall thereupon, at the lessee's request, effect an assignment and subrogation in favor of the lessee or the Government of all the lessor's rights and claims (except those against the lessee or the Government) arising out of any such loss or damage, shall, if required by the lessee or the Government, authorize representatives of the lessee or the Government to settle or prosecute to final judgment any such claims, and shall furnish to the lessee or the Government on request all reasonable assistance in obtaining recovery.

Article VII—Liquidation of indebtedness. The lessor warrants full and complete title and right to possession of all the equipment, subject only to those liens, encumbrances or claims to title or possession securing the indebtedness detail on Schedule 1, Part 2. The lessor agrees to apply such portion of the rental payable hereunder as may be necessary for the prompt discharge of such indebtedness. If at any time, any person holding a lien, encumbrance, or claim against any item of the equipment shall submit to the lessee evidence that the lessor is not discharging the indebtedness secured thereby in accordance with the terms under which the indebtedness is payable or dischargeable, the lessee shall have the right upon three day's written notice to the lessor to impound such part of the unpaid rental hereunder as the lessee, with the approval of DOE, deems necessary until the rights of the lessor and any such person are determined and all just and proper claims of such person are satisfied, provided that nothing contained in this paragraph shall be construed to require the lessor to pay to such person any sum not required to be paid by the terms under which the indebtedness was incurred or to pay any sum prior to the time it becomes due.

Article IX—Taxes. Unless otherwise directed by DOE, the lessor shall at the lessor's own expense pay and discharge any and all taxes levied upon any item of equipment.

Article X—Definition. As used herein the term "DOE" means the U.S. Department of Energy or any duly authorized representative thereof, including the contracting officer under the construction contract.

In witness, thereof, the lessor and the lessee have executed this agreement as of the day and year above written.

(Lessor) ————————

By ————————

(Title) ————————

(Lessee) ————————

By ————————

(Title) ————————

NOTE: *The following articles shall be inserted along with the required socio-economic articles:*

EXAMINATION OF RECORDS

Covenant Against Contingent Fees

SCHEDULE 1

Part 1—Items and Rental Rates

Item No. ————————

————————

Item description (equipment No.; type of equipment; serial No.; manufacturer; year of model; original point of shipment; etc.)

————————

Description of any insurance coverage for loss or damage to equipment ————————

————————

Item Rental Rates————————

————————

Attach certified copy of insurance policy.

(Continue, if necessary, on reverse side or on separate sheets.)

Part 2—Liens, Encumbrances and Claims

The following is a complete and correct statement of the amount of any and all indebtedness secured by liens or other encumbrances of any nature, legal or equitable, which are held by any person, firm or corporation against the equipment, items Nos. 1 through ——.

(Contractor) ————.

By ————.

(Title) ————.

Item No. ————————

————————

Name and address of present creditor ——

————————

Present unpaid balance ————————

————————

Amounts and date of future payments ——

————————

(Continue, if necessary, on the reverse side or on separate sheets.)

PART 937—SERVICE CONTRACTING

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

Subpart 937.2—Consulting Services

937.205 Management controls.

(b) DOE contracting personnel should familiarize themselves with the pertinent DOE Directives coverage before any acquisition involving consulting services is undertaken and shall comply with the appropriate DOE Directives. See DOE Orders 3304.1 and 4200.3.

(7) In accordance with FAR 37.205(b)(7), purchase requests for consulting services initiated in the fourth quarter of the fiscal year, must be approved at the second management level above that of the initiator or such equivalent level as the Head of Contracting Activity may designate.

[49 FR 12026, Mar. 28, 1984]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 942—CONTRACT ADMINISTRATION

Sec.
942.000 Scope of part.
942.001 General.
942.002 DOE policy and responsibilities.
942.003 Organizational structure.

Subpart 942.1—Interagency Contract Administration and Audit Services

942.101 Policy.

Subpart 942.2—Assignment of Contract Administration

942.202 Assignment of contract administration.

Subpart 942.7—Indirect Cost Rates

942.704 Billing rates.
942.705-1 Contracting officer determination procedure.
942.705-3 Educational institutions.
942.705-4 State and local governments.
942.705-5 Nonprofit organizations other than educational and state and local governments.
942.708 Quick closeout procedures.

Subpart 942.8—Disallowance of Costs

942.803 Disallowing costs after incurrence.

Subpart 942.10—Negotiating Advance Agreements for Independent Research and Development/Bid and Proposal Costs

942.1004 Location of negotiators in a central office.
942.1008 Administrative appeals.

Subpart 942.14—Traffic and Transportation Management

942.1401 General.
942.1402 Volume movements within the continental United States.
942.1403-1 U.S. Government bills of lading.
942.1403-2 Contractor-prepaid commercial bills of lading.

Subpart 942.70—Audit Services

942.7000 Scope of subpart.
942.7001 Definition.
942.7002 General.
942.7003 Types of services.
942.7003-1 Incurred cost.
942.7003-2 Indirect expenses (overhead cost).
Sec.
942.7003-3 Accounting systems.
942.7003-4 Management systems.
942.7003-5 Financial analysis evaluations.
942.7003-6 CAS disclosure statements.
942.7003-7 CAS compliance.
942.7003-8 Estimating systems.
942.7003-9 Consultation and advice.
942.7004 Procedures.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 12026, Mar. 28, 1984, unless otherwise noted.

942.000 Scope of part.

This part discusses the requirements for and the management of activities that occur after the award of a contract.

942.001 General.

(a) Those government actions taken subsequent to award of a contract to monitor the performance of the contractor and the contractor's adherence to the terms and conditions thereof through completion of the contract are commonly referred to as contract management and administration. The specific actions included in this process are as generally defined in FAR 42.302. This post-award management is essential to ensure the purpose of the contract is achieved and is in accordance with the terms and conditions of the contractual instrument. Contract management is broad and involves the expertise of many specialists including technical (programmatic) legal, financial, administrative, acquisition, and others.

(b) Post-award contract management functions are executed by the various specialists assigned the responsibility and procedural guidance as to how to perform the required functions. Generally, acquisition personnel in the person of a contracting officer, act as the overall business manager for administering and maintaining the integrity of the contract. Such responsibility ensures that only a contracting officer modifies a contract, payments are prompt and represent reimbursements or payments for only allowable cost, funds are obligated in a timely manner, and contracts are officially closed.

942.002 DOE policy and responsibilities.

(a) It is the policy of the Department of Energy that the performance of its contractors be monitored to assure compliance with the terms and conditions of the contract instrument and products are received on time, at a reasonable cost which meet technical requirements and specifications.

(b) The responsibility for ensuring effective post-award management of DOE contractual programs involves many elements of the Department. The various procedures and policies that implement and support project and contract management systems are promulgated in various DOE Orders.

942.003 Organizational structure.

(a) The Department of Defense has initiated a formal system of independent organizations responsible for performance of post-award management functions. A field structure of Contract Administration Offices (CAO) responsible for contract management and administration of contracts for major defense contractors has been established. DOD agencies (Army, Navy, Air Force) have organized plant residencies of contract management specialists for specific DOD contractors and their various business units. The Defense Logistics Agency performs contract management functions both at onsite residencies of contractors not assigned to a service and on a mobile basis from centrally located management areas for other defense contractors. A complete listing of the DOD's contract administration service components is contained in the Defense Directory cited in FAR 42.102.

(b) Civilian agencies for the most part have not established formal, organizationally independent CAO's responsible for performance of contract management functions. The post-award contract management and administration functions performed by civilian agencies are performed by contracting, program and other staff (accounting, legal, etc.) personnel and specialists located in the contracting offices and/or Operational units in a less formal manner than the DOD. Sometimes such services may be acquired from a cognization Defense CAO, when dealing with a defense contractor.

(c) The DOE has no field or resident contract administration offices. Contract management of DOE contracts is performed by the contracting office or is obtained from a Department of Defense (DOD) Contract Administration Office (CAO) if the contract warrants requesting contract administration services from such an activity. There is no specific DOE rule or policy on requesting and assigning DOE contracts for DOD administration services. It is a matter of judgment of the contracting office. To the extent any functions cited in FAR 42.302 are required for proper post-award management of the contract, assignment to a DOD CAO or the requesting of certain supporting services (FAR 42.201) from the CAO should be considered if it is (1) beyond capability of the DOE office (2) cost effective (3) eliminates duplication of effort, and (4) would provide for consistent treatment of the contractor.

Subpart 942.1—Interagency Contract Administration and Audit Services

942.101 Policy.

(a) The Department of Energy has entered into cross-servicing contract management arrangements with:

(1) The Defense Logistic Agency

(2) The Air Force Contract Management Division

(3) The Office of Naval Research

(b) The above arrangements are established and maintained by the Business and Financial Policy Branch, Office of Policy, Procurement and Assistance Management Directorate, Headquarters. Questions concerning these agreements should be directed to that organization.

(c) The Department of Energy Inspector General has established a memorandum of understanding with the Defense Contract Audit Agency and the Office of Audit of the Department of Health and Human Services for providing audit support service (942.70) to the DOE in support of its procurement mission. Procedures for acquiring these services are discussed in 942.70.

Subpart 942.2—Assignment of Contract Administration

942.202 Assignment of contract administration.

(d)(5) Contracts assigned for administration support shall be entered and reported in the Procurement and Assistance Data System.

Subpart 942.7—Indirect Cost Rates

942.704 Billing rates.

(b) When the contracting officer or auditor responsible for establishing billing rates, in accordance with FAR 42.704, has not established such rates or such rates are not current for the performance periods (contractor FY) under contract, the DOE contracting officer responsible for administration of the contract shall establish an appropriate rate(s) for billing purposes. If the contractor holds more than one DOE contract covering that period of performance, the DOE office with the largest unliquidated obligations as of the beginning of that performance period shall take the lead in establishing the required billing rate for use on DOE contracts. Once appropriate billing rates are established by the responsible contracting officer designated by FAR 42.704, such rates shall be adopted by the contracting officer and all billings and payments shall be retroactively revised to reflect the agreed upon rate(s).

942.705-1 Contracting officer determination procedure.

(a)(3) The Department of Energy shall use the contracting officer determination procedure for all business units for which it shall be required to negotiate final indirect cost rates. A listing of such business units is maintained by the Business and Financial Policy Branch, Office of Policy, Procurement and Assistance Management Directorate, Headquarters, and published as a separate publication in the DOE Order system.

(b)(1) The Department of Energy shall not require or direct contractors to submit their final indirect cost rate proposals reflecting actual cost experience during the covered period to the auditor. The DOE negotiating official shall request all needed audit service in accordance with the procedures in 942.70, Audit Services.

942.705-3 Educational institutions.

(a)(2) The negotiated rates established for the institutions cited in OMB circular No. A-88 are centrally maintained by the Business and Financial Policy Branch, Office of Policy, Procurement and Assistance Management Directorate, Headquarters.

942.705-4 State and local governments.

A list of cognizant agencies for State/local government organizations is maintained by the Office of Management and Budget (OMB) which is periodically published in the FEDERAL REGISTER. The responsible agencies are notified of such assignments. A listing of the cognizant agencies and the current negotiated rates for State/local government activities is maintained by the Business and Financial Policy Branch, Office of Policy, Procurement and Assistance Management Directorate, Headquarters.

942.705-5 Nonprofit organizations other than educational and state and local governments.

OMB Circular A-122 establishes the rules for assigning cognizant agencies for the negotiation and approval of indirect cost rates. The Federal agency with the largest dollar value of awards (contracts plus federal financial assistance dollars) will be designated as the cognizant agency. DOE is not currently assigned cognizance over any such nonprofit organizations. There is no published listing of assigned agencies. The Business and Financial Policy Branch, Office of Policy, Procurement and Assistance Directorate, Headquarters, does maintain a DOE central file of rates established by the cognizant agency.

942.708 Quick closeout procedures.

(a) Contracting officers shall use the quick-closeout procedure to finalize indirect expenses under any DOE contract when it appears appropriate to establish such expenses by means other than the formal negotiation procedures of FAR Subpart 42.7 and use of this procedure is agreeable to the contractor. The quick-closeout procedure is considered to include the establishment, of either indirect cost rates established for the closeout of a contract(s) or lump-sum indirect expenses dollars that shall be agreed to as chargeable to the contract. Such lump-sum amounts are appropriate for all categories of contractors—commercial, State/local governments, educational, and nonprofit organizations.

The contracting officer shall apply the quick-closeout procedure in closing DOE contracts in lieu of using the rates established in accordance with FAR 42.705, when:

(1) See FAR 42.708(a)(1)

(2) The amounts of indirect expense to be reimbursed by a single DOE contract will not exceed $250,000 per contractor fiscal year or the indirect expense amount reimbursed by all DOE contracts using the quick-closeout procedure will not exceed $1,000,000 per contractor fiscal year.

(3) Amounts of and the allowability of claimed or proposed indirect expenses will be readily determinable based on a review of the contractor's indirect cost experience (reviews may be made by the contracting officer with or without the assistance of a professional auditor).

(4) The contractor does not have a history of disputes, disallowed cost of any consequence, and there are no known potential cost issues of significance.

(5) There is a low potential (risk) for any significant over payment of indirect expense under the contract.

(6) Administrative cost of obtaining the annual negotiated final rate(s) is known to, or would be expected to, exceed any benefit of the final rates established in accordance with FAR Subpart 42.7.

(d) A decision to request audit assistance in applying the quick-closeout procedure should be decided on a case-by-case basis. The extent of any required services may vary. If possible, closeout rates or lump-sum expenses should be established with limited use of audit especially when acquiring the support service would defeat the quick-closeout approach by lengthening the evaluation and contract closeout process. Audits should not be requested if it is reasonably apparent that the audit would have little effect on the rates or expense finally agreed upon and any overpayments would be relatively insignificant.

Subpart 942.8—Disallowance of Costs

942.803 Disallowing costs after incurrence.

(a) Contracting officer receipt of vouchers. Vouchers and invoices submitted to DOE shall be submitted to the contracting officer or designee for review and approval for payment. If the examination of a voucher or invoice raises a question regarding the allowability of a cost submitted therein, the contracting officer, shall:

(1) Hold informal discussion with the contractor as appropriate.

(2) Issue a notice (letter, memo, etc.) to the contractor advising of cost disallowed or to be disallowed and advising the contractor that it may:

(i) Submit a written claim as to why the cost should be reimbursed—if in disagreement with the disallowance.

(ii) File a claim under the disputes clause, which will be processed in accordance with disputes procedures in the event disagreements cannot be settled.

(3) Process the voucher or invoice for payment and advise the finance office to deduct the disallowed cost when scheduling the voucher for payment.

(c) *Auditor reports and other sources of questioned costs.* (1) From time to time reports are received from professional auditors that may question the allowability of an incurred cost. Such reports are received as the result of auditors, in their independent role under OMB Circular A-73 or their own charters, scheduling and conducting financial or compliance audits of government contracts or as the result of an independent request for auditor service, as discussed in 942.70 Audit Services.

(2) When auditor reports or other notifications question cost or consider them unallowable, the contracting officer shall follow up such reports and resolve all such cost issues promptly by determining, through discussions with the contractor and/or auditor within six months of the audit report date, or date of receipt if a non-Federal audit. One of the following courses of action shall be pursued:

(i) Accept and implement audit recommendations as submitted.

(ii) Accept the principle of the audit recommendation but reject the cost questioned amount.

(iii) Reject audit findings and recommendations.

(3) When implementing the accepted course of action, the contracting officer shall—

(i) Hold discussions with the auditor and contractor as appropriate.

(ii) Issue a notice in writing advising the contractor of the government's intent to disallow the cost questioned, if the contracting officer agrees with the auditor concerning the questioned costs.

(iii) Negotiate a mutual settlement of questioned costs if they are agreed with in principle but there is a difference of opinion as to a proper amount.

(iv) Negotiate a mutual settlement of questioned costs if the auditor recommendations are acceptable to the contracting officer but the contractor does not accept the finding or disallowance.

(v) Issue a final decision of the contracting officer disallowing the questionable cost where differences cannot be resolved, advising of the contractor's right to appeal the decision, and advising the procedure to be followed if it is decided to make such an appeal.

(vi) Initiate immediate recoupment actions for all disallowed cost owed the government by:

(A) Requesting the contractor to provide a credit adjustment (offset) against amounts billed the government on the next or future invoice(s) if such shall be submitted under a contract for which the disallowed cost applies.

(B) Deducting (offset) the disallowed cost from the next or future invoice(s) submitted under the contract; if the contractor provides no adjustment under the contract for which the disallowed cost applies; provided such reduction is deemed appropriate.

(C) Advising the contractor that a refund shall be directly payable to the government in situations where there are insufficient payments owed by the government to effect recovery via (A) or (B) above or an offset is otherwise inappropriate.

(vii) Promptly notify the appropriate finance office of refunds directly payable to the government to ensure proper billing and followup action for collection.

Subpart 942.10—Negotiating Advance Agreements for Independent Research and Development/Bid and Proposal Costs

942.1004 Location of negotiators in a central office.

The central office within the DOE for negotiating independent research and development/bid and proposal (IR&D/B&P) advance agreements, as required in accordance with FAR 42.1004, is established in the Oak Ridge Operations Office. The DOE contracting officers should advise offerors, suppliers, potential contractors, and contractors that are required, or expect they will be required, to establish advance agreements for allowability of IR&D/B&P cost. When the DOE is to be the lead negotiating agency in accordance with FAR 42.1003, IR&D/B&P proposals and/or other correspondence shall be submitted to DOE, Oak Ridge Operations Office, Chief, Systems and Cost Analysis Branch, P.O. Box E, Oak Ridge, TN 37831.

[54 FR 27647, June 30, 1989]

942.1008 Administrative appeals.

The official within the DOE to hear administrative appeals of a contracting officer's decision to reduce payment, as prescribed in FAR 42.1008, is the Procurement Executive.

Subpart 942.14—Traffic and Transportation Management

942.1401 General.

DOE contracting officers or designees will consult and coordinate with the Office of Operations and Traffic, Defense Programs, Headquarters, as required in 41 CFR Part 109-40 and implemented by DOE Order 1540.1.

942.1402 Volume movements within the continental United States.

(a)(2) DOE activities will be reported to the Office of Operations and Traffic, Defense Programs Headquarters.

942.1403-1 U.S. Government bills of lading.

(a) The Office of Operations and Traffic, Defense Programs Headquarters, has responsibility for prescribing DOE's shipping documents.

(c)(1) Any limited authority for the use of commercial forms and procedures to acquire freight or express transportation for small shipments of a recurring nature will be prescribed by the Office of Operations and Traffic, Defense Programs, Headquarters.

942.1403-2 Contractor-prepaid commercial bills of lading.

(a) Use of commercial bills of lading for movement of supplies should be on a limited manner. Shipments of questionable quantity should be discussed with the Office of Operations and Traffic, Defense Programs, Headquarters.

Subpart 942.70—Audit Services

942.7000 Scope of subpart.

This subpart prescribes policies and procedures for requiring and using audit support services in the post-award management of DOE contracts. Such services shall be obtained in accordance with the provisions of FAR Subpart 42.1 and this subpart.

942.7001 Definition.

Auditors are professional accountants who although organizationally independent are viewed as one of several sources of counsel to the contracting officer on accounting and other financial subjects. They are the principal advisors to contracting officers on audit matters and provide the contracting officers with various audit services.

942.7002 General.

Contract management practices require the review of a contractor's contract cost records and controls, billings, and claims to assure their completeness, accuracy, and compliance with contract requirements. Such services are available from and provided by independent government audit activities such as the Defense Contract Audit Agency, the Inspector General, and commercial audit firms. Such services are generally referred to as "Contract Audit." In addition to providing "Contract Audit" services in direct support of the contracting officer and other program officials, departmental audit activities, pursuant to Office of Management and Budget policies set forth in Circular A-73, Audit of Federal Operations and Programs, conduct their own independent economy and efficiency reviews of government contractors and performers. Their purpose is to determine whether the business entity is managing and utilizing its resources economically and efficiently and any causes of inefficiencies or uneconomical practices.

942.7003 Types of services.

An efficient and effective contract management and administration program requires that the contracting officer responsible for post award contract management and administration functions seek the service of the professional auditor in several areas. The primary areas of needed audit support and areas in which auditors have agreed to support the DOE acquisition mission are:

(a) Incurred cost audits (direct & indirect cost)—

(1) Vouchers, billings, invoices, claims, and other settlement proposals;

(2) Financial records, contract cost records, work-in-process costs, etc.;

(b) Overhead rate reviews (establishment and verifications);

(c) Accounting systems reviews;

(d) Management control systems reviews;

(e) Financial analysis evaluations;

(f) Review Cost Accounting Standards (CAS) Disclosure Statements;

(g) Cost Accounting Standards compliance;

(h) Estimating system reviews;

(i) Consultation and advice.

942.7003-1 Incurred cost.

(a) Financial audits of a contract's cost records and charges, particularly material and labor cost, shall be requested of the auditors as is considered warranted by the financial condition, integrity, and reliability of the contractor; prior audit experience; adequacy of the accounting system; and unaudited claims, vouchers, invoices, and billings. Audits of such cost should be requested when needed or desirable, but no less frequently than once yearly for any contract where such annual cost exceed $500,000 or $1,000,000 under all DOE contracts. Such audits should cover cost-reimbursement type contracts, including fixed-price contracts with cost-reimbursement portions, letter contracts with reimbursement provisions, time-and-materials contracts, and labor-hour contracts.

(b) Vouchers and invoices provisionally approved and paid may be submitted to the auditor for specific review and verification of the accounting records and for an opinion on the allowability of the cost when situations warrant.

942.7003-2 Indirect expenses (overhead cost).

Auditors look at indirect expenses (overhead cost) on an after-the-fact basis to review the incurred cost and to assist in the negotiation of a final overhead payment rate, when such rates are provided for in the contract. Auditors also assist the contracting officer in the administration of indirect cost by making appropriate recommendations concerning the establishment of before-the-fact overhead rates for billing purposes and/or establishing predetermined overhead rates. Contracting officers should seek the assistance of the auditor as they deem warranted or appropriate or as may be required by FAR 42.700 and 942.7.

942.7003-3 Accounting systems.

Auditors are available to advise the contracting officer on the adequacy of a contractor's accounting system and its suitability for administration of Government contracts. The contracting officer should always obtain such service to assure himself/herself of the contractor's financial competence or credit needs, unless prior experience or other available information shows the contractor to have financial integrity and acceptable accounting and cost control systems.

942.7003-4 Management systems.

Auditors are available to help the contracting activity and the contracting officer in a review, and assessment of a contractor's various management systems and systems of internal control. The objective of the reviews, is to assure cost effective and efficient methods of operations. Reviews should be requested as deemed warranted.

942.7003-5 Financial analysis evaluations.

Auditors are available to assist the contracting officer in a review and evaluation regarding a contractor's financial competence or credit needs. Such service may be helpful in determining the need for advance payments, loans, etc. When the contracting officer is aware of or is otherwise concerned about the financial viability of the contractor, financial reviews by the auditors should be requested as the contracting officer believes the situation warrants.

942.7003-6 CAS disclosure statements.

The audit activity is available and, in accordance with FAR 30, Cost Accounting Standards, is responsible for making recommendations to the contracting officer as to whether the CAS disclosure statement submitted by the contractor as a condition of the contract, adequately describes the actual or proposed cost accounting practices, and is in compliance with the Cost Accounting Standards required under the terms of the contract (required by Pub. L. 91-379, 50 U.S.C. App. 2168, for

Defense contracts). The contracting officer shall request the auditor to review all Disclosure Statements submitted by a contractor or potential contractor.

942.7003-7 CAS compliance.

The audit activity also performs audits for contractor compliance with the standards of the Cost Accounting Standards Board, when such Standards are required to be followed under the terms of the contract; and, the audit activity advises whether a contractor or subcontractor has failed to comply with the applicable Standards or to follow consistently its disclosed cost accounting practices and whether the failure has resulted in or may result in any increased cost paid by the government. The auditors also review proposed price changes for contractor changes to disclosed or established cost accounting practices to assure that the changes are fair and reasonable.

942.7003-8 Estimating systems.

Many contractors, particularly where a large portion of the business is government work, have formal cost estimating systems used in the development of program estimates and/or the submittal of price/cost proposals to the Government. Other contractors which perform less Government work often have some type of system, too. Estimating systems are encouraged by the Government, but it should be recognized that systems will vary between contractors, and may vary between plants or divisions of a contractor due to differences in products, size and methods of operation (i.e., production versus research), and other factors. Advantages of estimating systems are that they: (a) Provide a greater degree of confidence in estimates, (b) expedite the negotiation process, (c) reduce the amount of detailed explanations that need be included in each proposal on the estimating procedural rationale used, and (d) reduce need for and scope of reviews by technical, financial and audit personnel. Auditors are available to assist the acquisition organization in reviewing a contractor's estimating systems or processes. The contracting officer shall decide whether an estimating system review should be undertaken as a team effort, including an auditor, or if the auditors can sufficiently perform a system check by themselves. It is not DOE policy to generally request such reviews.

942.7003-9 Consultation and advice.

Auditors are available for general consultation and advice to acquisition and supporting personnel (including counsel) with or without providing an audit.

942.7004 Procedures.

(a) The Department of Energy Inspector General (IG) has established formal cross-servicing arrangements with the Defense Contract Audit Agency (DCAA) and the Health and Human Services Inspector General. Audits are available to contracting officer pursuant to terms of these arrangements.

(b) The following procedures are to be followed by the contracting officer when requesting needed audit services:

(1) Upon award of a contract to an existing DOE or DOD contractor which is being audited by the DCAA, all requests for normal postaward audit services shall be directed to the cognizant DCAA office.

(2) Upon award of a contract to a contractor who is not currently being audited by DCAA, and/or for which the DCAA is not the cognizant audit activity, all requests for postaward audit services shall be directed to the DOE Assistant Inspector General for Audits.

(3) Requests to the DOE Assistant Inspector General for audit services shall be made to the appropriate Regional Office.

(c) In determining if DCAA is currently auditing a contractor or has audited it in the past, the contracting officer should refer to the contractor's pricing proposal or ask the contractor.

(d) In the event a contracting officer considers that an economy and efficiency system review or a program results audit will be beneficial to the Government's interest, the appropriate Regional office of the DOE Assistant Inspector General for Audits should be notified.

(1) Such request should be made to the IG's office even in situations where the DCAA or another audit activity is known to be cognizant for contract audit.

PART 943—CONTRACT MODIFICATIONS

Subpart 943.1—General

943.170 Extension of contracts resulting from unsolicited proposals.

Subpart 943.3—Forms

943.301 Use of forms.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

Subpart 943.1—General

943.170 Extension of contracts resulting from unsolicited proposals.

(a) Where additional time beyond the formal contract period is required to complete or continue the work undertaken as the result of the acceptance of an unsolicited proposal and award of a contract therefor, the Contractor should be instructed to submit six copies of an extension proposal to the contracting office in sufficient time to allow evaluation and possible processing before the date of expiration of the contract. This requirement does not apply to requests for no-cost extensions as may sometimes be needed to complete all details such as a final report of the project.

(b) The extension proposal should outline and justify a program and budget for the succeeding year(s), showing in detail the estimated cost for the additional period(s) requested. It should include the same type of information to the extent as was contained in the initial proposal. Any contemplated change in program or scope for the ensuing period(s) should be justified and explained clearly, and must remain consistent with the original method, approach or idea which was accepted as the basis for award by DOE as a result of the initial unsolicited proposal. This is not, however, intended to preclude a redirection based upon a discovery or breakthrough occurring under the contract to date.

(c) The extension proposal should include a financial profile of the existing contract including:

(1) Total project costs to date, indicating the amount chargeable to DOE;

(2) An estimate of the total costs to be incurred during the remainder of the current period, including a statement of unexpended balance.

(d) All requests for extensions of contract work as a result of an unsolicited proposal should be evaluated by the appropriate program office in light of:

(1) Progress reports submitted by the Contractor;

(2) Research results published in scientific media;

(3) Field visits by technical personnel;

(4) Contractor's progress and potential for achieving desired results;

(5) Continued relevance to DOE' mission;

(6) Scientific and technical merit o the research;

(7) Availability of funds;

(8) Likelihood that competition a this stage in the project would haste achieving the desired results.

(e) Requests for extensions of contract work originating from an unsolicited proposal should generally follo the same process of review and evaluation of technical aspects and fundin preparation and execution of contrac and administration as does a ne project.

(f) When an extension request receives a favorable technical evaluatio and a determination is made that sim lar conditions exist relative to tho that justified acceptance of the initi unsolicited proposal, a justification f extension of the award shall be processed for review and approval as indicated in 915.506.

(g) As a minimum, extension justification should contain:

(1) A statement of the result of t technical evaluation (915.570-2).

(2) An evaluation of any contempl ed change in the contract scope work for the renewal period and a j tification explaining why this char is consistent with the original meth approach or idea which was accep as the basis for award by the DOE a

result of the initial unsolicited proposal.

(3) An assessment of the current status of the original circumstances and conditions which justified acceptance of the intitial unsolicited proposal identifying any changes that may have developed and providing rationale as to why such change(s) should not preclude renewal.

(h) If, after evaluation, it is decided that an extension period should not be supported on the basis of technical merit or other reasons, such as lack of funding, or changed mission relevance, the project officer should:

(1) Prepare a written statement setting forth the basis for rejection, submit one copy to the responsible program official for approval and transmittal to the proposer and retain one copy in the permanent file.

(2) Promptly notify the contracting officer in order that the current contract may be closed out.

(i) Under certain circumstances it may be in the Government's best interest to continue or complete the work begun under a contract awarded as a result of an unsolicited proposal but which is not appropriate for extension. Continuation or completion of the work shall be accomplished by means of competition, unless non-competitive acquisition can be justified in accordance with FAR 15.507(b).

[49 FR 12031, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984]

Subpart 943.3—Forms

943.301 Use of forms.

(c) FAR 43.301(a)(1)(vi) requires the use of Standard Form 30 (SF30) to effect any obligation or deobligation of contract funds after award. The Standard Form 30 (SF30) shall also be used to deobligate funds when effecting contract closeout for a cost reimbursement contract when obligated funds exceed the final contract costs. In this instance, the form may be issued as an administrative modification on a unilateral basis if the contractor's financial release has been separately obtained.

[50 FR 12185, Mar. 27, 1985]

PART 944—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 944.1—General

Sec.
944.101 Definitions.

Subpart 944.2—Consent to Subcontracts

944.202-1 Responsibilities.
944.202-2 Considerations.
944.203 Consent limitations.

Subpart 944.3—Contractors' Purchasing Systems Reviews

944.302 Requirements.
944.304 Surveillance.
944.305 Granting, withholding, or withdrawing approval.
944.305-1 Responsibilities.
944.307 Reports.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 12031, Mar. 28, 1984, unless otherwise noted.

Subpart 944-1—General

944.101 Definitions.

"DOE cognizant contractors" refers to those contractors over which DOE has been assigned cognizance by the Office of Management and Budget, or those with which DOE has the preponderance of Government business. The term includes pilot and demonstration plant contractors.

"Industrial facilities" means property (other than material, special tooling, and special test equipment) for production, maintenance, research, development, or test, including real property and rights therein, buildings, structures, improvements, and plant equipment.

Subpart 944.2—Consent to Subcontracts

944.202-1 Responsibilities.

(b) The responsible contracting officer shall—

(1) Promptly evaluate the contractor's requests for consent to subcontract;

(2) Obtain assistance in the evaluation from subcontracting, audit, pric-

ing, technical, or other specialists as necessary;

(3) Withhold consent to subcontracts with subcontractors on the DOE consolidated List of Debarred, Suspended, Ineligible, and Voluntarily Excluded Awardees (DOE List) (see 10 CFR 1035.15) or the GSA Consolidated List of Debarred, Suspended, and Ineligible Contractors (GSA List), to the extent that the award falls within the scope of the suspension, proposed debarment, debarment, ineligibility, or voluntary exclusion unless the Procurement Executive determines in writing that there is a compelling reason for such action (see 10 CFR 1035.13 and 1035.13(c)); and

(4) Notify the contractor in writing of consent or the withholding of consent, including any changes or corrections required.

944.202-2 Considerations.

(a)(13) In addition to the considerations in FAR 44.202-2, the contracting officer responsible for consent shall review the request and supporting data and consider whether the proposed subcontractor or any proposed key person(s) is on the DOE List.

944.203 Consent limitations.

(d) For determining profit/fee objectives under negotiated subcontracts, the prime contractor should have considered use of and applied a weighted guidelines or a structured approach that distinguishes different levels of investment if the acquisition would be subject to the weighted guidelines under a prime DOE contract. If the acquisition falls into one of the exceptions to the DOE weighted guidelines applications as cited in 915.970-4, the prime contractor should have applied other techniques to establish profit objectives.

Subpart 944.3—Contractors' Purchasing Systems Reviews

944.302 Requirements.

(a) Heads of Contracting Activities shall consider whether the best interest of DOE would be served by the initiation of a Contractor Purchasing System Review (CPSR) for those contractors whose sales to DOE are expected to exceed $5,000,000 during the next 12 months and for which DOE is the cognizant Government agency for CPSR purposes. In exceptional circumstances, consideration of a CPSR may be warranted for contractors with sales to DOE of less than $5,000,000. When considering the initiation of a CPSR, such a review should not be conducted if the extent of the contractor's subcontracting program does not appear to justify the review.

(b) DOE contracting officers, or designees, will conduct CPSRs of DOE cognizant contractors. Other Federal Agencies/Departments may be requested to conduct CPSRs, as appropriate, for other than DOE cognizant contractors. DOE contracting officers shall normally recognize other Federal Agency/Department approvals of contractors' purchasing systems within the limitation identified by approving officials of such agencies.

(c) Initial, subsequent, and followup review teams should include appropriate representatives from DOE field offices; other Federal Agency participation may be additionally requested as appropriate. Generally, team composition should not consist exclusively of those who have a day-to-day relationship with the contractor regarding subcontract consent or approval.

(d) The Procurement Executive is responsible for the overall conduct of the DOE CPSR program.

944.304 Surveillance.

(b) The surveillance plan required by FAR 44.304(b) shall be approved by the Head of the Contracting Activity.

944.305 Granting, withholding, or withdrawing approval.

944.305-1 Responsibilities.

(a) Team findings and recommendations contained in a CPSR Report shall be approved by the Head of Contracting Activity before the contracting officer makes a determination to continue, grant, withhold, or withdraw approval.

944.307 Reports.

(b) Copies of CPSR reports; notifications granting, continuing, withholding, or withdrawing approval of a contractor's purchasing system; copies of recommendations for improvement of an approved system; notifications (or contract modifications) altering the subcontract consent dollar thresholds; and information received from the contractor pursuant to FAR 44.305-3(b) shall be transmitted to the Director, Procurement Management Review Division, Procurement and Assistance Management Directorate, Headquarters.

[49 FR 12031, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984]

PART 945—GOVERNMENT PROPERTY

Sec.
945.000 Scope of part.

Subpart 945.1—General

945.101 Definitions.
945.102-70 Reporting of contractor-held property.
945.102-71 Maintenance of records.
945.104-70 Review and correction of contractors' property management systems.

Subpart 945.3—Providing Government Property to Contractors

945.303-1 Policy.
945.304 Providing motor vehicles.

Subpart 945.4—Contractor Use and Rental of Government Property

945.407 Non-Government use of plant equipment.

Subpart 945.5—Management of Government Property in the Possession of Contractors

945.501 Definitions.
945.502-70 Physical protection of property.
945.502-71 Control of sensitive items of property.
945.502-72 Management of precious metals.
945.505-5 Records of plant equipment.
945.505-11 Records of transportation and installation costs of plant equipment.
945.505-14 Reports of Government property.
945.506 Identification.
945.508 Physical inventories.
945.570 Motor vehicle and aircraft management.
945.570-1 Classification of motor vehicles.
945.570-2 Acquisition of motor vehicles.
945.570-3 Selection of type of motor vehicles.

Sec.
945.570-4 Identification of motor vehicles.
945.570-5 Utilization of motor vehicles.
945.570-6 Maintenance of motor vehicles.
945.570-7 Disposition of motor vehicles.
945.570-8 Reporting motor vehicle data.
945.570-9 Aircraft.

Subpart 945.6—Reporting, Redistribution, and Disposal of Contractor Inventory

945.601 Definitions.
945.603 Disposal methods.
945.603-70 Plant clearance function.
945.603-71 Disposal of radioactively contaminated personal property.
945.607-2 Recovering precious metals.
945.608-2 Standard screening.
945.608-3 Agency screening.
945.608-4 Limited screening.
945.608-5 Special items screening.
945.608-6 Waiver of screening requirements.
945.610-4 Contractor inventory in foreign countries.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 12032, Mar. 28, 1984, unless otherwise noted.

945.000 Scope of part.

This part and FAR Part 45 are not applicable to the management of property by operating and management contractors. In addition, the policies and procedures contained in FAR Part 45 governing the management, control, reporting, and disposal of special test equipment and special tooling are not followed by the DOE.

Subpart 945.1—General

945.101 Definitions.

"Personal property," as used in this part, means property of any kind or interest therein, except real property; records of the Federal Government; and nuclear and special source materials, atomic weapons, and by-product materials.

"Capital equipment," as used in this part, means personal property items having a unit acquisition cost of $5,000 or more and an anticipated service life in excess of two years, regardless of type of funding, and having the potential for maintaining their integrity as capital items; i.e., not expendable due to use.

[54 FR 27647, June 30, 1989]

945.102-70 Reporting of contractor-held property.

Within 30 days after the end of each fiscal year, the Head of the Contracting Activity shall report the following information to the Director, Property and Equipment Management Division, Procurement and Assistance Management Directorate, Headquarters:

(a) Name and address of each contractor with DOE property in their possession, or in the possession of their subcontractors (do not include grantees, cooperative agreements, interagency agreements, or agreements with state or local governments).

(b) Contract number of each DOE contract with Government property.

(c) Date contractor's property management system was approved and by whom (DOE office, Defense Contract Administration Service, or the Office of Naval Research).

(d) Date of most current appraisal of contractor's property management system, who conducted the appraisal, and status of the system (satisfactory or unsatisfactory).

(e) Total dollar value of DOE property as reported on last semiannual asset report (including date of report), for each DOE contract administered by the contracting activity.

945.102-71 Maintenance of records.

The contracting activity shall maintain records of approvals and reviews of contractors' property management systems, the dollar value of DOE property as reported on the most recent semiannual financial report, and records on property administration delegations to other Government agencies.

945.104-70 Review and correction of contractors' property management systems.

DOE offices shall follow the provisions of this section in the review and approval of a contractor's property management system. If contracts are formally delegated to other Government activities for property administration, the DOE will accept their method of approving the contractor's system and document the file accordingly.

(a) *Initial review.* (1) The contracting officer, or his/her representative assigned the responsibility as property administrator, shall review contractors' property systems within six months after the execution of the contract to assure compliance with the Government property clauses of the contract.

(2) Appraisals of complex property management operations may require detailed tests and evaluations on-site over an extended period of time. However, an evaluation of a contractor's operation involving only small dollar amounts of property and simple property control methods can often be accomplished without an on-site visit or extensive testing by the property administrator, by utilizing the Off-Site Contractor's Property Management Self-Evaluation Questionnaire, telephone contacts, or other appropriate methods necessary to assure that the system is adequate.

(3) In those instances where a contractor has contracts with more than one DOE contracting office, the DOE office with the contract(s) having the largest dollar value of property should normally be responsible for making the necessary reviews and appraisals of the contractor's system. Contracting officers should determine if a contractor has multiple DOE contracts by inquiry of the Procurement and Assistance Data System (PADS).

(4) When the contractor's property management system has previously been approved and a new contract requires the expansion of existing, or the establishment of additional controls, the review should normally be limited to the new requirements. If the system is adequate, the property administrator shall record this fact. Notification to the contractor is not required. However, if the property administrator determines that the contractor's property management system does not adequately meet the new contract requirements, the contractor shall be notified in writing of the required changes.

(5) The property administrator shall examine the contractor's procedures to be used to determine the extent to

which they meet the criteria for property management required by FAR Subparts 45.5 and 45.6 and Subparts 945.5 and 945.6 of this chapter. Necessary tests will be made of the contractor's system, as appropriate, and, as each functional area is analyzed, the acceptability of the procedures shall be appropriately noted or commented upon and used as the basis for preparation of the record of system evaluation. Worksheets should be maintained by the property administrator.

(6) Upon completion of the property administrator's review, an exist interview will be held with the contractor to discuss any areas of the contractor's property management controls or systems found to be defective, and to recommend corrective actions to be completed before an approval of the system can be granted. Agreement shall be reached as to corrective measures necessary and a reasonable time schedule established for completion of the corrective actions.

(7) Following the exist interview, the property administrator shall prepare a written summary of findings to support approval of the system or the requirements for corrective action to be taken prior to such approval.

(8) The property administrator shall advise the contractor in writing when the contractor's property management system is considered acceptable.

(9) The property administrator shall notify the contractor in writing when its property management system is not acceptable, and request correction of the deficiencies within the agreed upon time schedule.

(10) Appropriate follow-up shall be taken by the property administrator to ensure that corrective actions are taken.

(11) If the contractor does not correct the deficiencies within the time period, the property administrator shall request action by the contracting officer administering the contract. The contracting officer shall notify the contractor in writing including the details specified at FAR 45.104(c). If the contractor also has contracts with other DOE contracting activities, the contracting officer shall notify the Property and Equipment Management Division, Headquarters.

(12) When the contract involves Government property at subcontractor facilities or prime contractor secondary locations, and the controls for the property at such locations have been determined to be adequate, the approval shall be expanded to include the procedures governing Government property at such locations.

(b) *Follow-up reviews.* Every two years after the initial approval of the contractor's system, the property administrator shall reappraise the contractor's property management operations in accordance with the provisions of paragraph (a) above.

[49 FR 12032, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984]

Subpart 945.3—Providing Government Property to Contractors

945.303-1 Policy.

The DOE has established specific policies concerning special nuclear material requirements needed under DOE contracts for fabricating end items using special nuclear material, and for conversion or scrap recovery of special nuclear material. These special nuclear material needs means "uranium enriched in the isotope U233, U235 and plutonium other than PU238." The policies to be followed are:

(a) Special nuclear material will be furnished by the DOE for fixed-price contracts and subcontracts, at any tier, which call for the production of special nuclear products, including fabrication and conversion, for Government use. (The contractor or subcontractor must have the appropriate license or licenses to receive the special nuclear material. The Nuclear Regulatory Commission is the licensing agency.)

(b) Contracts and subcontracts for fabrication of end items using special nuclear material generally shall be of the fixed-price type. Cost-type contracts or subcontracts for fabrication shall be used only with the approval of the Head of the Contracting Activity. This approval authority shall not be further delegated.

(c) Contracts and subcontracts for conversion or scrap recovery of special nuclear material shall be of a fixed-price type, except as otherwise approved by the Head of the Contracting Activity.

945.304 Providing motor vehicles.

Additional guidance and information concerning the provision of motor vehicles are found at:

(a) 945.570 Motor vehicle and aircraft management.

(b) 908.11 Leasing of motor vehicles.

(c) 908.7101 Acquisition of motor vehicles.

(d) FAR 51.2 GSA Interagency Motor Pool System.

Subpart 945.4—Contractor Use and Rental of Government Property

945.407 Non-Government use of plant equipment.

The type of plant equipment and dollar threshold for non-Government use of DOE plant equipment will be determined by the Head of the Contracting Activity which awarded the contract. Approval of the Head of the Contracting Activity is required to authorize non-Government use exceeding 25% of operational use.

Subpart 945.5—Management of Government Property in the Possession of Contractors

945.501 Definitions.

"Government-furnished motor vehicles" are DOE-owned vehicles, vehicles leased from the General Services Administration Interagency Motor Pool System (GSA-IMPS), and vehicles leased from commercial sources.

"Precious metals," as used in this subpart, means uncommon and highly valuable metals characterized by their superior resistance to corrosion and oxidation. Included are silver, gold, and the platinum group metals—platinum, palladium, iridium, osmium, rhodium, and ruthenium.

"Sensitive items" as used in this subpart, means those items of property which are susceptible to being appropriated for personal use or which can be readily converted to cash. Examples are firearms, photographic equipment, binoculars, tape recorders, calculators, and power tools.

945.502-70 Physical protection of property.

(a) Controls such as property pass systems, memorandum records, marking of tools, regular or intermittent gate checks and perimeter fencing shall be implemented, recognizing the value of the property to prevent loss, theft, or unauthorized movement of Government property from the premises on which such property is located.

(b) Classified Government property will be handled in accordance with instructions of the contracting officer.

945.502-71 Control of sensitive items of property.

(a) The contractor shall assure that effective procedures and practices are established for the administrative and physical control of sensitive property items before and after issuance. Each contractor shall prepare a list of the types of property considered to be sensitive. This list, together with control procedures, shall be provided to the property administrator for review and approval.

(b) At a minimum, controls on sensitive property shall include property records, and memorandum receipts, bin or tool check systems, or combinations thereof. Procedures shall provide for physical inventories at least once each year, and methods for adjustment for inventory levels due to losses, thefts, and damage. More frequent inventories of sensitive property may be necessary where the value of the property, degree of security achieved, or loss experience indicates greater controls are required in order to protect the Government's interest. Such procedures and practices shall be subject to review and approval by the property administrator.

945.502-72 Management of precious metals.

(a) The contractor shall establish effective procedures and practices for the administrative and physical control of precious metals.

(b) At a minimum, procedures should provide for physical protection from theft or loss from time of receipt by the contractor to disposition.

(c) Responsible individuals will be designated as precious metals custodians. Records will be maintained of metals received, in use, in stock, and which have been issued or disposed of.

(d) Perpetual inventory records shall be maintained for each type of precious metals in terms of location, weight, and value. Metals consumed in use shall be removed from inventory records only after written certification by the custodian and higher level management official that they have been consumed or contaminated beyond recovery. The project consuming the metals shall be identified.

(e) Physical inventories of precious metals shall be taken at least semiannually, and either witnessed by independent observers or audited independently to verify the accuracy of the inventory. The results of the inventory shall be promptly reported to the property administrator.

(f) All losses shall be promptly investigated and reported to the property administrator.

(g) Excess and termination inventory precious metals shall be reported to the DOE contracting officer for subsequent inclusion in the DOE precious metals pool.

945.505-5 Records of plant equipment.

The property record requirements of FAR 45.505-5 shall include the DOE asset type for reporting purposes.

[54 FR 27647, June 30, 1989]

945.505-11 Records of transportation and installation costs of plant equipment.

The requirements of FAR 45.505-11 apply to plant equipment having a unit cost of $1,000 or more.

945.505-14 Reports of Government property.

(a) The contractor shall prepare a semiannual report, as of February 28 and August 31 of each year, for each contract and subcontract thereunder, for the following property. The reports will be submitted to the property administrator, and are due not later than 45 days after the end of the reporting period.

(i) Capital equipment and real property acquired or disposed of during the period by asset type (see below).

(ii) Government-owned materials held in storage for issue when the balance on hand at the end of the reporting period amounts to $50,000 or more. Only the beginning and ending balance will be shown on the report.

(b) The contractor shall submit the report of physical inventory of capital equipment (see 945.508(b)) as a minimum, with the fourth semiannual report after either the last physical inventory report or the inception of the contract.

DOE PLANT AND EQUIPMENT ASSET TYPES

Asset type code No.	Name and definition
401	*Land.* Includes the cost of land owned by the Government and under the control of DOE. The cost of land includes the purchase price, other acquisition costs, and removal costs less salvage realized in disposing of any facilities acquired with the land.
410	*Land Rights.* Includes the costs of rights, interests, and privileges relating to land such as leaseholds, easements, rights-of-way, water and waterpower rights, diversion rights, and submersion rights.
430	*Minerals.* Includes the cost of mineral rights and land containing mineral deposits owned by the Government.
440	*Timber.* Includes the cost and appraised value of timber and pulpwood; cost of reforestation program for the purpose of dust and soil erosion control, retention of water tables, etc., cost of development and improvement of timber stand; and other forestry management costs. Use of this code is limited to the Savannah River Operations Office.
460	*Site Preparation, Grading and Landscaping.* Includes the cost of general clearing, grading and drainage not directly related to the erection of buildings and structures. All landscaping is included.
470	*Roads, Walks, and Paved Areas.* Includes the costs of roads, bridges, streets, walks, paved parking areas and paved open areas between buildings, including any related costs of clearing, grading, base, surfacing, storm sewers or drains, curbs, gutters, culverts, lighting service, and other related facilities.
480	*Fences and Guard Towers.* Includes the cost of security fences, guard towers and lighting service. Fences associated with specific facilities such as ball parks and substations are included with the facilities protected.
490	*Other Improvements to Land.* Includes the cost of improvements not includable under codes 460, 470, or 480, such as airports, playgrounds, tennis courts, and athletic fields.

DOE Plant and Equipment Asset Types—Continued

Asset type code No.	Name and definition
501	*Buildings.* Includes the cost of buildings and permanently attached appurtenances, such as elevators, fire protection, lighting, plumbing, heating, ventilation, and built-in air-conditioning systems (excluding window or console air-conditioning units that require no duct work or cooling towers) and the cost of piping, conduit, and cable permanently attached to and made a part of the building and that cannot be removed without cutting into the walls, ceilings, or floors. The division between building costs and the costs of utility systems is generally to be at a point nominally 5 feet outside the building wall.
550	*Other Structures.* Includes the cost of such structures as dams, retention basins, reservoirs, swimming pools, pits, platforms, underground oil storage reservoirs, and stacks (when not a part of a building).
610	*Communication Systems.* Includes the cost of lines, poles, cable, and conduits; built-in radio transmitting and receiving equipment; and any installed equipment, otherwise portable, which has been so installed that it cannot be removed without damaging the equipment or damaging the building or structure in which it has been installed. Personal property such as telephones, intercommunication, and teletype equipment should be included in asset code 730.
615	*Electric Generation, Transmission and Distribution Systems.* Includes the cost of all electric generation equipment; boiler plant equipment primarily used to supply steam to steam-electric generation equipment; transmission and distribution lines, poles, towers, grounding systems, substations, transformers, controls, cables, conduits, services, meters, and protective devices; lighting fixtures, wire, poles, standards and related accessories supplying electric lighting service to roads, walks, and fences. Personal property, such as portable generators, are included in asset code 799.
620	*Fire Alarm System.* Includes the cost of central office equipment necessary for receiving and transmitting alarms, including control wiring, both cable and open, and other associated overhead and underground equipment. Portable equipment which is not permanently connected to permanent wiring and which may be removed without affecting operation of the fire alarm system is included in asset code 750.
625	*Gas Production, Transmission and Distribution Systems.* Includes the cost of equipment involved in the production, storage, transmission and distribution of natural and artificial gas, including pipelines, services, and associated regulating and metering equipment of buildings served.
630	*Irrigation Systems.* Includes the cost of canals, ditches, waterways, flumes, pipelines and equipment used for irrigation purposes.
635	*Railroad Systems.* Includes the cost of railways, including bridges, trestles, culverts, crossing signals, clearing and grading, riprap, ties, ballast, rails, insulated joints, switches and accessories.
640	*Sewerage Systems.* Includes the cost of sewerage treatment and disposal facilities, including manholes, mains and lateral lines to point of tie-in with buildings served, and any septic tanks.
645	*Steam Generation and Distribution Systems.* Includes the cost of all equipment used for the generation and distribution of steam to the point of tie-in to buildings where such steam is utilized primarily for heating and for furnishing power to rotating equipment, including emergency turbo-generators. The cost of boiler plant equipment used primarily to supply steam to steam-electric generation equipment is included in code 615.
650	*Water Supply, Pumping, Treatment and Distribution Systems.* Includes the cost of wells, pumping and distributing facilities to the point of tie-in with buildings served.
655	*Nuclear Steam and Electric Generation and Transmission Systems.* Includes the cost of nuclear reactors and appurtenant equipment involved primarily and principally in the generation of steam for use in steam-electric generating equipment, fossil-fuel superheaters, electric generation equipment, and electric transmission facilities connecting the nuclear powerplant to the transmission or distribution network. The only reactors to be identified by this code are those which have significant electric generation.
660	*SPR Crude Oil Piping System.* Includes the cost of pipelines and metering devices between the oil transporting vehicle and the oil storage site.
665	*NPR Crude Oil Extraction and Distribution System.* Includes the cost of real property and related personal property necessary for crude oil extraction distribution such as the well casings, piping, and integrated equipment in the piping system; oil storage facilities and support buildings and structures. Does not include any personal property, which should be included in the appropriate asset code (710–799) for personal property.
670	*Process System.* (Real or related personal property) Includes the cost of equipment used specifically in product manufacturing and processing, including associated measurement and control instruments, which are integral to the operation of real property, or which are so affixed to real property that removal of the equipment would significantly diminish the economic value of the real property or the equipment itself.

OE PLANT AND EQUIPMENT ASSET TYPES—Continued

sset ype le No.	Name and definition
	Reactors and Accelerators. (Real or related personal property) Includes the cost of reactors, proton synchrotrons, electron sychrotrons, cyclotrons, linear accelerators, Van De Graaf generators and other similar facilities, as well as the related equipment which is an integral part of the facility or related to, designed for, or specially adapted to the functional or productive capacity of the real property, and removal of this equipment would significantly diminish the economic value of the real property or the equipment itself. Reactors with significant electrical generation should be identified with asset type 655.
	Heavy Mobile Equipment. Includes the cost of heavy mobile equipment (other than motor vehicles) such as concrete mixers, power shovels, cranes, compressors, rollers, road graders, tractors, farm implements, boats, and barges. The cost of trucks is included in code 725.
	Hospital and Medical Equipment. Includes the cost of hospital, clinical, and dental equipment such as hospital beds, dentist chairs, instruments, sterilizers, and other scientific equipment used by dentists and doctors. Built-in or installed equipment which is an integral part of real property or is related to, designed for, or specially adapted to the functional or productive capacity of the real property, removal of which would significantly diminish the economic value of the real property, or the equipment itself, must be included in the appropriate real property asset code (400 through 699 and 800).
	Laboratory Equipment. Includes the cost of laboratory equipment such as microscopes, analytical balances, electronanalyzers oscillographs, refractometers, light sources, vibrometers, and other scientific equipment usually associated with laboratories. The cost of furniture and fixtures and shop equipment are included in codes 730 and 755. Built-in or installed equipment which is an integral part of real property or related to, designed for, or specially adapted to the functional or productive capacity of the real property, removal of which would significantly diminish the economic value of the real property, or the equipment itself, must be included in the appropriate real property asset code (400 through 699 and 800).
	Motor Vehicles and Aircraft. Includes the cost of passenger cars, trucks, buses, jeeps, trailers, and fire trucks.

DOE PLANT AND EQUIPMENT ASSET TYPES—Continued

Asset type code No.	Name and definition
730	*Office Furniture and Equipment.* Includes the cost of office furniture and equipment such as machines, desks, drafting sets, safes, photographic equipment, printing equipment and other office equipment regardless of where located. The cost of automatic data processing equipment is included in code 770. Built-in or installed equipment which is an integral part of real property or related to, designed for, or specially adapted to the functional or productive capacity of the real property, removal of which would significantly diminish the economic value of the real property, or the equipment itself, must be included in the appropriate real property asset code (400 through 699 and 800).
735	*Process Equipment.* Includes the cost of equipment used specifically in product manufacturing and processing, including associated measurement and control instruments. Built-in or installed equipment which is an integral part of real property or related to, designed for, or specially adapted to the functional or productive capacity of the real property, removal of which would significantly diminish the economic value of the real property, or the equipment itself, must be included in the appropriate real property asset code 670.
740	*Railroad Rolling Stock.* Includes the cost of railroad rolling stock such as locomotives and cars.
745	*Reactors and Accelerators.* Includes the cost of accessory equipment, including associated measurement and control instruments, which are not real property.
750	*Security and Protection Equipment.* Includes the cost of equipment used for security, police, and fire protection purposes, except that all associated automotive vehicles are included in code 725. Built-in or installed equipment which is an integral part of real property or related to, designed for, or specially adapted to the functional or productive capacity of the real property, removal of which would significantly diminish the economic value of the real property, or the equipment itself, must be included in the appropriate real property asset code (400 through 699 and 800).
755	*Shop Equipment.* Includes the cost of shop equipment such as lathes, drilling machines, rolling mills, hoists, grinders, forges, pipe cutting machines, presses, saws, shapers, and other equipment usually associated with shops, garages, and service stations. Similar equipment used in laboratories and other areas for research purposes should also be identified by this code. Built-in or installed equipment which is an integral part of real property or related to, designed for, or specially adapted to the functional or productive capacity of the real property, removal of which would significantly diminish the economic value of the real property, or the equipment itself, must be included in the appropriate real property asset code (400 through 699 and 800).

DOE PLANT AND EQUIPMENT ASSET TYPES—Continued

Asset type code No.	Name and definition
760	*Reserve Construction Equipment Pool.* Includes the costs of construction and automotive equipment held for the purpose of maintaining a reserve pool for use in emergencies as part of the DOE mobilization program, or for secondary use in future construction programs.
770	*Automatic Data Processing Equipment.* Includes the cost of all equipment used in automatic data processing, such as (1) punched card and/or tape equipment, whether used alone or in conjunction with electronic computers; (2) electronic computers and all peripheral or auxiliary equipment; (3) data transmission systems employing devices communicating or transmitting data from place to place for processing in an ADP system; (4) all other equipment that is used in automatic data processing in conjunction with punched card equipment or electronic computers; and (5) the initial package of software that is required to make the system operational. Equipment such as flexowriters, IBM typewriters, and equipment reading the results of experiments, shall be classified as ADP equipment when used primarily in conjunction with an ADP system. Excluded are the costs of equipment such as analog computers card and/or tape file cabinets, and air-conditioning for the processing room. Also, excluded are the costs of automatic data recording or electronic control systems, including the computers, themselves, used to furnish operating guidance for control of machine tools, equipment used in process operations, reactors, accelerators, etc., or equipment used to operate energy monitoring and control systems (EMCS). The cost of this type of equipment is included in the asset code for the equipment or system to which it furnishes operating guidance in conjunction with electronic computers; (2) electronic computers and all peripheral or auxiliary equipment; (3) data transmission systems employing devices communicating or transmitting data from place to place for processing in an ADP system; (4) all other equipment that is used in automatic data processing in conjunction with punched card equipment or electronic computers; and (5) the initial package of software that is required to make the system operational.
775	*Automatic Data Processing Software.* Includes the cost of the initial package of software that is required to make the system operational. Excludes the cost of application programs.
780	*Portable Communications Electronics Equipment.* Includes the cost of such equipment as portable transceivers (handi-talkies, walkie-talkies, paging units, etc.), vehicle radio units, base station and remote control units, portable audio public address systems, telephones, and portable video systems.
799	*Miscellaneous Equipment.* Includes the cost of furniture and fixtures for hotels, dormitories, and apartments; laundry equipment; restaurant, cafeteria and canteen equipment; and other miscellaneous equipment not included in other codes. Built-in or installed equipment which is an integral part of real property or related to, designed for, or specially adapted to the functional or productive capacity of the real property, removal of which would significantly diminish the economic value of the real property, or the equipment itself, must be included in the appropriate real property asset code (400 through 699 and 800).
800	*Improvement to Property of Others.* Includes the cost of betterments made by DOE to land, land improvements (roads, runway, etc.), and improvements to existing buildings, structures, building services, and utility systems not owned by DOE. New construction such as plants, laboratories and similar facilities built by DOE on land owned by others should be classified in Asset Type Code 501.
900	*Unclassified Plant and Equipment.* Includes the cost of major construction projects or operative portions thereof that have been physically completed and placed in service for which the unitization and classification of costs into plant and equipment accounts have not been completed. Allocation to production, research, community, and general facilities and to asset types 401 through 800 will require approximation in some instances, particularly at year end when full allocation is required. (Year-end allocations may be reversed in October pending formal and more precise classifications.)

[49 FR 12032, Mar. 28, 1984, as amended at 54 FR 27647, June 30, 1989]

945.506 Identification.

The requirements of FAR 45.506 apply to Government property having a unit cost of $1,000 or more.

945.508 Physical inventories.

The frequency of physical inventories shall be as follows:

(a) Permanently affixed plant (such as buildings, utilities, and fences)—Not less frequently than every 10 years.

(b) Capital equipment—Not less frequently than every two years. (See 945.505-14)

(c) Sensitive items—Not less frequently than every twelve months.

(d) Materials (held under inventory control)—Not less frequently than every twelve months.

(e) Precious metals—Not less frequently than every six months.

945.570 Motor vehicle and aircraft management.

(a) Normally, motor vehicles will not be furnished to fixed price or cost-reimbursable contractors. Further, Government-furnished motor vehicles may be provided to or acquired by contractors only when *all* of the criteria of FAR 45.304 are met and approved in writing by the contracting officer.

(b) Government-owned motor vehicles and aircraft shall be maintained and utilized by contractors in the most practical and economical manner consistent with DOE program requirements, safety consideration, fuel economy, and applicable laws and regulations.

(c) Contractors shall conform fully to the average fuel economy standards established by law and these regulations in the selection of Government-furnished motor vehicles.

945.570-1 Classification of motor vehicles.

Because of differences in controls or limitations on possession and use, Government vehicles are classified as follows:

(a) *Passenger vehicles.*

(1) Sedans and station wagons (small, subcompact, compact, mid-size, and large).

(2) Ambulances.

(3) Buses.

(b) *Trucks.*

(1) Light, less than 8,500 GVWR (Gross Vehicle Weight Rating).

(i) 4 x 2

(ii) 4 x 4

(2) Light, 8,500 to 12,499 GVWR.

(i) 4 x 2

(ii) 4 x 4

(3) Medium, 12,500 to 23,999 GVWR.

(4) Heavy, 24,000 GVWR or more.

(c) *Special purpose vehicles.*

(1) Fire trucks.

(2) Construction vehicles.

(3) Other vehicles equipped for special purposes.

945.570-2 Acquisition of motor vehicles.

(a) The GSA Interagency Motor Pool System (GSA-IMPS) is the first source of supply for providing motor vehicles to contractors; however, contracting officer approval is required for contractors to utilize this service.

(b) Prior approval of GSA must be obtained before—

(1) Fixed-price contractors can use the GSA-IMPS;

(2) DOE-owned motor vehicles can be furnished to any contractor in an area served by a GSA-IMPS; and

(3) A contractor can commercially lease a motor vehicle for more than 60 days.

(c) GSA has the responsibility for acquisition of motor vehicles for Government agencies. All requisitions (GSA Form 1781) shall be processed in accordance with 41 CFR 101-26.501.

(d) Contractors shall submit all motor vehicle requirements to the contracting officer for approval.

(e) The acquisition of sedans and station wagons is limited to small, subcompact, and compact vehicles which meet Government fuel economy standards. The acquisition of light trucks is limited to those vehicles which meet the current fuel economy standards set by Executive Orders 12003 and 12375.

(f) Cost reimbursement contractors may be authorized by the contracting officer to utilize GSA Federal Supply Schedule 751, Motor Vehicle Rental, for short term rentals not to exceed 60 days, and are required to utilize available GSA consolidated leasing programs for long term (60 continuous days or longer) commercial leasing of passenger vehicles and light trucks.

(g) The Property and Equipment Management Division, Headquarters Procurement and Assistance Management Directorate (MA-422), shall certify all requisitions prior to submittal to GSA for the following:

(1) The acquisition of sedans and station wagons.

(2) The lease (60 continuous days or longer) of any passenger automobile.

(3) The acquisition or lease (60 continuous days or longer) of light trucks less than 8,500 GVWR.

(h) Purchase requisitions for other motor vehicles may be submitted directly to GSA when approved by the contracting officer.

(i) Contractors shall thoroughly examine motor vehicles acquired under a GSA contract for defects. Any defect shall be reported promptly to GSA, and repairs shall be made under terms of the warranty.

945.570-3 Selection of type of motor vehicles.

(a) All vehicles acquired for use, whether by purchase, rental, lease, forfeiture or transfer from another agency, shall be limited to the minimum body size, engine size, maximum fuel efficiency, and only that operational equipment (if any) necessary to fulfill programmatic needs.

(b) The least expensive unit overall should be used, taking into consideration both acquisition and operating costs for units to be purchased, and rental rates for rented or leased units.

(c) Dual purpose vehicles capable of hauling both personnel and light cargo shall be used whenever appropriate to avoid the need for two vehicles when one can serve both purposes. However, truck-type or van vehicles shall not be acquired for passenger use merely to avoid limitations on the number of passenger vehicles which may be acquired.

945.570-4 Identification of motor vehicles.

(a) Except as indicated in 945.570-4(b), DOE-owned and commercially leased (for 60 continuous days or longer) motor vehicles shall have Government license tags and the following identification, which shall be furnished and displayed as specified by the DOE contracting officer.

"For Official Use Only
U.S. Government
Department of Energy"

(b) Security vehicles may be exempted from the above identification requirements by the contracting officer. All other exemptions require approval by the Procurement Executive.

945.570-5 Utilization of motor vehicles.

(a) Government-owned vehicles are to be used for official purposes only. Contracting officers may approve home-to-work or work-to-home transportation on a one-time exceptional basis. Home-to-work or work-to-home transportation on a continuing basis is discouraged; however, if justified, such use requires approval of the Head of the Contracting Activity and a determination that the facts sufficiently justify a conclusion of "official purpose." An authorization to use a motor vehicle for transportation between a domicile and place of employment shall be limited to a period of sixty days. Requests for renewals of authorizations shall be subject to the same justification as original requests, and must also show what attempts were made during the original period to eliminate the necessity for the request. Records, including full justification, of such approvals will be kept on file.

(b) The contractor shall prescribe and issue, subject to approval by the contracting officer, such local written guidelines regarding the use of motor vehicles or aircraft for "official purposes" as may be necessary and appropriate for particular operating situations.

(c) The contractor shall establish written procedures to ensure that all motor vehicle operators are informed concerning:

(1) The statutory requirement that motor vehicles shall be used only for "official purposes";

(2) Personal responsibility for safe driving and operation of motor vehicles, and for compliance with Federal, State, and local laws and regulations, and all accident reporting requirements;

(3) The penalties for unauthorized use of motor vehicles;

(4) Procedures for reporting accidents;

(5) The prohibition against picking up strangers or hitchhikers or transporting family members;

(6) Care and control of credit cards; and

(7) Any other duties and responsibilities assigned to motor vehicle operators with regard to the use, care, operation, and maintenance of motor vehicles.

(d) Individual motor vehicle utilization cannot always be measured or evaluated strictly on the basis of miles operated or against any Department-wide mileage standard as stated in 41 CFR 109-38.5002. Other measures of use will need to be considered. Accordingly, as an aid in achieving maximum feasible utilization, local use objectives which represent practical units of measurement for vehicle utilization and for planning and evaluating future vehicle requirements should be established. Such objectives should generally be initiated by the organization involved and reviewed and adjusted as appropriate, but not less often than annually. The objectives will take into consideration past performance, future requirements, and special operating conditions and should be consistent with the justifications used to obtain vehicle authorizations. Both Department-wide and local objectives should be used in such a manner that their use does not stimulate vehicle use for the purpose of meeting the objectives. The ultimate standard against which vehicle use must be measured is that the minimum number of vehicles will be retained to satisfy program requirements.

(e) Methods and practices for achieving maximum economical utilization of motor vehicles shall include but not be limited to—

(1) The maximum use of equipment pooling arrangements, taxicabs, or other common service arrangements;

(2) The minimum, practicable assignment of equipment to individuals, groups or specific organizational components;

(3) The careful selection of equipment types to permit the maximum appropriate use of multi-purpose equipment;

(4) The rotation of equipment between high and low mileage assignments where practicable to maintain the fleet in the best overall replacement age and mileage balance and operating economy, and

(5) The maintenance of individual equipment use records, such as trip tickets or vehicle logs, showing sufficiently detailed information to evaluate appropriateness of assignment and adequacy of use being made. If one-time use is involved, such as assignments from motor pools, the individual's trip records must, as a minimum, identify the vehicle and show the name of the operator, dates, destination, time of departure and return, and mileage.

945.570–6 Maintenance of motor vehicles.

(a) Contractors shall maintain Government-owned vehicles according to a systematic written procedure and in accordance with manufacturer's specifications and the terms of the warranty and 41 CFR 101-38.10. The requirement for a written procedure may be waived by the contracting officer if the contractor has less than 15 Government-owned vehicles.

(b) Special attention shall be devoted to the warranty on each motor vehicle to ensure that maximum benefits are realized from each warranty. Defective materials and workmanship on vehicles under warranty should be corrected under the terms of the warranty to avoid maintenance and repair of such vehicles at Government expense.

945.570–7 Disposition of motor vehicles.

(a) The contractor shall dispose of DOE-owned motor vehicles as directed by the contracting officer.

(b) DOE-owned motor vehicles may be disposed of as exchange/sale items when directed by the contracting officer; however, a designated DOE official must execute the Title Transfer forms.

945.570–8 Reporting motor vehicle data.

(a) Contractors conducting motor vehicle operations shall forward annually (on or before December 1) to the contracting officer their plan for acquisition of motor vehicles for the next fiscal year for review, approval and submittal to DOE Headquarters. This plan shall conform to the fuel efficiency standards for motor vehicles for the applicable fiscal year, as established by Executive Orders 12003 and 12375 and as implemented by GSA and current DOE directives. Additional guidance for the preparation of the plan will be issued by the contracting officer, as required.

(b) Contractors operating DOE-owned and/or commercially leased (for 60 continuous days or longer) motor vehicles shall prepare and submit the following annual year-end reports to the contracting officer:

(1) DOE Report of Motor Vehicle Data (passenger vehicles).

(2) DOE Report of Truck Data.

[49 FR 12032, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984]

945.570-9 Aircraft.

(a) Purchase of aircraft requires statutory authority. Contracting officers may authorize a lease, rental, hire, or loan of an aircraft if the period is less than 30 days. If longer than 30 days, approval must be obtained from the Procurement Executive.

(b) Aircraft shall be used for official purposes only.

Subpart 945.6—Reporting, Redistribution, and Disposal of Contractor Inventory

945.601 Definitions.

"Personal property" (See 945.101).

945.603 Disposal methods.

945.603-70 Plant clearance function.

If the plant clearance function has not been formally delegated to another Federal agency, the contracting officer shall assume all responsibilities of the plant clearance officer identified in FAR Subpart 45.6.

945.603-71 Disposal of radioactively contaminated personal property.

Special procedures regarding the disposal of radioactively contaminated property may be found at 41 CFR 109-45.50.

945.607-2 Recovering precious metals.

(b) Contractors generating contractor inventory containing precious metals shall identify and promptly report such items to the contracting officer for review, approval and reporting to the DOE precious metals pool. This includes all precious metals in any form, including shapes, scrap or radioactively contaminated, except for silver. Only high grade nonradioactively contaminated silver should be reported to the precious metals pool. The Oak Ridge Operations Office is responsible for maintaining the DOE pool. Precious metals scrap will be reported to the DOE precious metals pool, operated by Westinghouse Materials Company of Ohio (WMCO), P.O. Box 398704, Cincinnati, Ohio 45239.

[54 FR 27648, June 30, 1989]

945.608-2 Standard screening.

(b)(1) Prior to reporting excess property to GSA, all reportable property, as identified in Federal Property Management Regulations 41 CFR 101-43.4801, shall be reported to the contracting office. The contracting office shall transmit this information via terminal processing or hard copy to DOE Headquarters for centralized screening in the DOE Reportable Excess Automated Property System (REAPS). Agency screening will begin when the item is first included in the REAPS monthly catalog and will end upon the issuance of the following monthly catalog.

(i) REAPS requires the inclusion of a five character address code which identifies the reporting contractor. The address code will be assigned by DOE Headquarters upon receipt of a completed Address Notification form for the contractor or DOE office reporting the property as excess.

(ii) Excess screening documents and Address Notification forms shall be submitted to the Director, Property and Supply Division, REAPS, Office of Policy, Procurement and Assistance Directorate, Headquarters, by the contracting office.

[49 FR 12032, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984]

945.608-3 Agency screening.

Items shall be reported to the contracting office and should be screened informally within the contracting office's complex of contractors and with other known users of the property at other DOE locations.

945.608-4 Limited screening.

(a) Prior to reporting to GSA, all nonreportable property, excluding scrap and salvage, shall be reported to the contracting office for a 15 day informal screening within the contracting office's complex of contractors and other appropriate DOE field locations.

945.608-5 Special items screening.

Prior to reporting to GSA, that property in FAR 45.608-5 (a), (b), and (d) shall be reported and screened within DOE in accordance with 945.608-2 and 945.608-3.

(c) *Printing equipment.* All printing equipment excess to requirements shall be reported to the Office of Administrative Services, Headquarters.

945.608-6 Waiver of screening requirements.

(a) The Director of the Office of Review and Analysis, Procurement and Assistance Management, is the designee who may authorize exceptions from screening requirements in accordance with the provisions of FAR 45.608-6.

(b) A request to the Director of the Office of Review and Analysis for the waiver of screening requirements must be submitted by the HCA with a justification setting forth the compelling circumstances warranting the exception.

[54 FR 27648, June 30, 1989]

945.610-4 Contractor inventory in foreign countries.

Contractor inventory located in foreign countries will be utilized and disposed of in accordance with DOE-PMR 41 CFR 109-43.5, and 45.51.

[49 FR 12032, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984]

PART 947—TRANSPORTATION

Subpart 947.1—General

Sec.
947.102 Transportation insurance.
947.104-3 Cost-reimbursement contracts.

Subpart 947.5—Ocean Transportation by U.S. Flag Vessels

947.506 Procedures.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 12038, Mar. 28, 1984, unless otherwise noted.

Subpart 947.1—General

947.102 Transportation insurance.

(c)(1) If special circumstances dictate the need for the Government to buy insurance coverage, the contracting officer, after coordination with appropriate local transportation personnel shall ascertain that (i) there is no statutory prohibition, and (ii) funds for insurance are available.

947.104-3 Cost-reimbursement contracts.

(d)(1) Include in contracts a statement requiring the contractor to use carriers providing services commensurate with DOE program needs, taking full advantage of special reduced rates where available.

Subpart 947.5—Ocean Transportation by U.S. Flag Vessels

947.506 Procedures.

For contract awards involving foreign suppliers which will necessitate ocean transportation, a copy of the award document is to be furnished to the Maritime Administration at the following address: Inter-Agency Liaison, Division of National Cargo, Office of Market Development, Maritime Administration, 400 7th Street, SW., Washington, DC 20590

PART 949—TERMINATION OF CONTRACTS

Subpart 949.1—General Principles

Sec.
949.101 Authorities and responsibilities.
949.106 Fraud or other criminal conduct.
949.108-4 Authorization for subcontract settlements without approval or ratification.
949.108-8 Assignment of rights under subcontracts.
949.111 Review of proposed settlements.
949.112-1 Partial payments.

Subpart 949.2—Additional Principles for Fixed-Price Contracts Terminated for Convenience

949.206-1 Submission of settlement proposals.
949.206-2 Bases for settlement proposals.

Subpart 949.3—Additional Principles for Cost-Reimbursement Contracts Terminated for Convenience

949.303-1 Submission of settlement proposal.

Subpart 949.5—Contract Termination Clauses

949.501 General.
949.505 Other termination clauses.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 12038, Mar. 28, 1984, unless otherwise noted.

Subpart 949.1—General Principles

949.101 Authorities and responsibilities.

The Procurement Executive shall be notified prior to taking any action to terminate (a) contracts for the operation of Government-owned facilities, (b) any prime contract or subcontract in excess of $10 million, and (c) any contract the termination of which is likely to provoke unusual interest.

949.106 Fraud or other criminal conduct.

Any evidence of fraud or other criminal conduct in connection with the settlement of a contract termination shall be reported in accordance with 909.406.

949.108-4 Authorization for subcontract settlements without approval or ratification.

The power to authorize a contractor to conclude settlements of its terminated subcontracts, when the amount of settlement is more than $10,000, but not more than $25,000, shall be exercised by contracting officers only with the approval of the Head of the Contracting Activity.

949.108-8 Assignment of rights under subcontracts.

The contracting officer's determination under FAR 49.108-8(b) that it is in the best interest of the Government to settle and pay directly a subcontractor's termination claim is subject to the approval of the Head of the Contracting Activity.

949.111 Review of proposed settlements.

(a) Heads of Contracting Activities shall establish settlement review boards for the review of each termination settlement or determination of amount due under the termination clause of a contract or approval or ratification of a subcontract settlement when the action involves $50,000 or more.

(b) Settlement review boards may be established for actions below $50,000 when considered desirable by the Head of the Contracting Activity or when specifically requested by the contracting officer.

(c) Proposed settlement agreements or determinations in excess of contractual authority of Heads of Contracting Activities will be transmitted to the Procurement Executive for review and approval.

(d) Contracting officers shall not conclude proposed settlement or determinations until the approvals required by this subsection have been obtained.

949.112-1 Partial payments.

(d) Protection of the Government's interest in partial payments, by means other than those specified in FAR 49.112-1(d), shall be subject to approval of the Head of the Contracting Activity.

Subpart 949.2—Additional Principles for Fixed-Price Contracts Terminated for Convenience

949.206-1 Submission of settlement proposals.

(c) When the standard forms are not appropriate for a particular contract, the Head of the Contracting Activity may authorize modification thereof. However, the certificate shall be substantially as set forth in the form.

949.206-2 Bases for settlement proposals.

(c) Settlement proposals shall not be submitted on any basis other than the inventory or total cost basis without the prior approval of the Head of the Contracting Activity.

Subpart 949.3—Additional Principles for Cost-Reimbursement Contracts Terminated for Convenience

949.303-1 Submission of settlement proposal.

When necessary, the Head of the Contracting Activity may authorize modification of the form prescribed in FAR 49.602-1. However, the certificate shall be substantially as set forth in the form.

Subpart 949.5—Contract Termination Clauses

949.501 General.

The standard clauses set forth in FAR Subpart 49.5 are applicable as prescribed subject to the following:

(a) Cost principles referenced in the various termination articles shall be in accordance with Part 931.

949.505 Other termination clauses.

(f) The clause at 952.249-70 is suggested for use in cost-plus-fixed-fee Architect-Engineer contracts.

PART 950—EXTRAORDINARY CONTRACTUAL ACTIONS

Subpart 950.1—General

Sec.
950.104 Reports.

Subpart 950.70—Indemnification of DOE Contractors

950.7000 Scope of subpart.
950.7001 Applicability.
950.7002 Definitions.
950.7003 Statutory indemnity.
950.7004 Authority to negotiate statutory indemnity agreements.
950.7005 Substantial nuclear incident.
950.7006 Statutory indemnity contract article.
950.7007 Contractual assurance.
950.7008 "Representation" for use in subcontracts and purchase orders of prime contractor holding statuory indemnity agreement.
950.7009 Fees.
950.7010 Financial protection requirements.
950.7011 General contract authority indemnity.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 12039, Mar. 23, 1984, unless otherwise noted.

Subpart 950.1—General

950.104 Reports.

The information required by FAR 50.104(b) for all actions taken under the extraordinary emergency authority shall be submitted to the Director, Contract Business Clearance Division, Headquarters no later than 30 days after the date of completion of processing the action. In the event no actions were taken under Pub. L. 85-804 during the preceding calendar year, a negative report should be submitted to the Director, Contract Business Clearance Division, Headquarters no later than January 20 of each year.

Subpart 950.70—Indemnification of DOE Contractors

950.7000 Scope of subpart.

This subpart describes the established policies concerning (a) indemnification of DOE contractors against public liability for a nuclear incident arising out of or in connection with the contract activity, and (b) indemnification of DOE contractors against liability for nonnuclear risks arising out of or in connection with the contract activity.

950.7001 Applicability.

(a) With respect to indemnification against public liability for a nuclear incident, the pertinent policies and procedures set forth in this subpart shall be applicable in entering into indemnity agreements with:

(1) DOE contractors engaged in the operation of prodcution or utilization facilities; and

(2) DOE contractors whose work entails the risk of public liability for a substantial nuclear incident.

(b) With respect to indemnification against liability for nonnuclear risks, the pertinent policies and procedures set forth in this subpart shall be applicable in entering into indemnity agreements with any DOE contractors.

950.7002 Definitions.

"DOE contractor" means any DOE prime contractor, including any agency of the Federal Government with which DOE has entered into an interagency agreement.

"Construction contractor" means a DOE contractor who is constructing an installation for DOE which, when completed, will be a production or utilization facility.

"Nuclear incident" means:

(1) Any occurrence within the United States causing, within or outside the United States, bodily injury,

sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or by-product material; and

(2) Any such occurrence outside the United States, if such occurrence involves a facility or device owned by, and used by or under contract with, the United States.

"Person indemnified" means:

(1) With respect to a nuclear incident occurring within the United States, the person with whom an indemnity agreement is executed and any other person who may be liable for public liability; or

(2) With respect to any nuclear incident occurring outside the United States, the person with whom an indemnity agreement is executed and any other person who may be liable for public liability by reason of activities under any contract with DOE or any project to which indemnification under the provisions of section 170d of the Atomic Energy Act 1954, as amended, has been extended, or under any subcontract, purchase order, or other agreement, of any tier, under any such contract or project.

(3) With respect to a nonnuclear incident the person with whom an indemnity agreement is executed.

"Nuclear reactor" means an apparatus, other than an atomic weapon, designed or used to sustain nuclear fission in a self-supporting chain reaction.

"Production facility" means:

(1) Any nuclear reactor designed or used primarily for the formation of plutonium or uranium 233; or

(2) Any facility designed or used for the separation of the isotopes of uranium or the isotopes of plutonium, except laboratory scale facilities designed or used for experimental or analytical purposes only; or

(3) Any facility designed or used for the processing of irradiated materials containing special nuclear material, except laboratory scale facilities designed or used for experimental or analytical purposes only.

"Public liability" means any legal liability (including liability for loss of, or damage to, or loss of use of property which is located at the site of and used in connection with the contract activity arising out of or resulting from a nuclear incident) except: (1) Claims under State or Federal workmen's compensation acts of employees of persons indemnified, who are employed at the site of and in connection with the activity where the nuclear incident occurs, and (2) claims arising out of an act of war. "Public liability" also includes damage to property of persons indemnified, provided that such property is covered under the terms of any financial protection that may be required, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs.

"Utilization facility" means any nuclear reactor other than one designed or used primarily for the formation of plutonium or U 233.

[49 FR 12039, Mar. 28, 1984, as amended at 50 FR 12185, Mar. 27, 1985]

950.7003 Statutory indemnity.

Section 170d of the Atomic Energy Act of 1954, as amended, authorized DOE "to enter into agreements of indemnification with its contractors for the construction or operation of production or utilization facilities or other activities under contracts for the benefit of the United States involving activities under the risk of public liability for a substantial nuclear incident." Contractors identified in 950.7001(a) are eligible for such statutory indemnity.

950.7004 Authority to negotiate statutory indemnity agreements.

(a) Heads of Contracting Activities are authorized to negotiate statutory indemnity agreements with contractors identified in 950.7001(a)(1).

(b) Pursuant to 950.7005, Heads of Contracting Activities may enter into a statutory indemnity agreement whenever it has been determined that a contractor in 950.7001(a)(2) is engaged in activities involving the risk of public liability for a substantial nuclear incident. Such a determination may be based upon either the risk of liability for the occurrence of a substantial nuclear incident in the course of performance of the contract work, or the risk of liability for a substantial nuclear incident caused by a product delivered to or for the DOE under the contract where such product is expected to be used in connection with a facility or device not covered by a statutory indemnity agreement. If, pursuant to 950.7005, a Head of a Contracting Activity determines that the maximum conceivable damage which could result from a nuclear incident arising in the course of a contractor's activities falls between $1 million and $60 million, they shall submit the proposed indemnification with a recommendation, and all supporting data, to the Head of the Agency, or designee, for appropriate action.

950.7005 Substantial nuclear incident.

(a) With respect to 950.7001(a)(2), and pursuant to the provisions of 950.7004, a Head of a Contracting Activity may be required to determine whether a contractor's activities involve the risk of public liability for a substantial nuclear incident and thus make the contractor eligible to obtain a statutory indemnity agreement from the DOE. The determination by a Head of a Contracting Activity shall be based on the criteria in paragraph (b) of this section.

(b) If, after a study of the maximum conceivable damage which can result from an incident arising out of or in connection with the contractor's activities, the Head of a Contracting Activity concludes that the maximum conceivable damage per incident to property and persons is $60 million or more, the contractor may be found to be under a risk of public liability for a substantial nuclear incident and the Head of the Contracting Activity is authorized to execute a statutory indemnity agreement under such a contract. If such a study of the maximum conceivable damage indicates a figure of $1 million or less, the contractor should not be considered to have a risk of public liability for a substantial nuclear incident, and therefore, shall not be made a party to a statutory indemnity agreement. If the study indicates that the maximum conceivable damage falls between $1 million and $60 million, the Head of a Contracting Activity will submit the proposed indemnification of such contractor to the Head of the Agency or designee with a recommendation and all supporting data.

(c) The Head of the Agency or designee may take one of the following actions:

(1) Determine that the contractor is under risk of public liability for a substantial nuclear incident and that the contractor should be extended a statutory indemity agreement; or

(2) Determine that the contractor should not be extended a statutory indemnity.

(d) When statutory indemnity is not extended, the Head of the Agency or designee may authorize the Head of a Contracting Activity to authorize the contractor to purchase nuclear liability insurance or to offer the contractor a general authority indemnity agreement.

950.7006 Statutory indemnity contract article.

The contract clause contained in 952.250-70 shall be incorporated in all contracts in which a statutory indemnity agreement is to be included upon a determination that the contractor is under risk of public liability for the occurrence of a substantial nuclear incident in the course of performance of the contract work. The contract clause contained in 952.250-71 shall be incorporated in all contracts in which a statutory indemnity agreement is to be included upon a determination that the contractor is under risk of public liability only for a substantial nuclear incident caused by a product delivered to or for the DOE, under the contract where such product is expected to be used in connection with a facility or device not covered by a statutory indemnity agreement.

950.7007 Contractual assurance.

Heads of Contracting Activities are authorized to include assurances that the DOE will enter into a statutory indemnity agreement with the contractor who will operate a production or utilization facility on its completion.

Such assurances may be authorized in contracts for:

(a) Architect-engineer services in connection with the construction of a production or utilization facility;

(b) Component parts for a production or utilization facility;

(c) Construction at a production or utilization facility, where the work does not entail the risk of a substantial nuclear incidences; or

(d) Equipment or services which would be a part of, or contribute to, or be used in connection with the construction or operation of a production or utilization facility.

Assurances will be given only to those contractors and suppliers which might be held liable in connection with a substantial nuclear incident occurring after completion of the facility. The clause to be used to provide contractual assurance is found in 952.250-72.

950.7008 "Representation" for use in subcontracts and purchase orders of prime contractor holding statutory indemnity agreement.

(a) A DOE contractor with whom a statutory indemnity agreement has been executed in the form contained in 952.250-70 may include in any of its subcontracts and purchase orders a representation that the work under the prime contract is covered by a statutory indemnity agreement with the DOE, and that this indemnity covers all persons who may be liable for public liability for any nuclear incident arising out of or in connection with the activity under the prime contract. A suggested form of "representation" that may be provided to the contractor follows:

> The contractor represents that there is included in its prime contract with DOE an indemnity agreement, entered into by DOE under the authority of Section 170 of the Atomic Energy Act of 1954, as amended by Public Law 85-256 (the "Price-Anderson Act"), a copy of which may be obtained from the contractor (or is attached hereto); that, under said agreement, DOE has agreed to indemnify the contractor and other persons indemnified, including the subcontractor, against claims for public liability (as defined in said Act) arising out of or in connection with the contractual activity; that the indemnity applies to covered nuclear incidents which (1) take place at a "contract location" (which term, as defined in the indemnity agreement, does not include the location of the subcontractor's plant and facilities); or (2) arise out of or in the course of transportation of source, special nuclear or nuclear by-product material to or from a "contract location;" or (3) involve items produced or delivered under the prime contract. The obligation of DOE to indemnify is subject to the conditions stated in the indemnity agreement.

(b) The DOE shall not approve the inclusion, in the subcontracts and purchase orders of an indemnified prime contractor, of any provision whereby the prime contractor indemnifies the subcontractor or supplier against public liability for a nuclear incident because any such liability will be covered by the statutory indemnity agreement of the prime contractor.

950.7009 Fees.

No fee will be charged a DOE contractor for a statutory indemnity agreement.

950.7010 Financial protection requirements.

(a) DOE contractors with whom statutory indemnity agreements under the authority of section 170d of the Atomic Energy Act of 1954, as amended, are executed will not normally be required or permitted to furnish financial protection by purchase of insurance to cover public liability for nuclear incidents, except: (1) That DOE contractors now covered by insurance against such liability, with the approval of the DOE, may continue to carry such insurance; and (2) with the approval of the Office of Industrial Relations, contractors engaged in the operation of DOE facilities may be required or permitted to furnish financial protection in an amount not to exceed $1 million.

(b) If nuclear liability insurance is carried by a contractor who is a Nuclear Regulatory Commission (NRC) licensee, the DOE will pay an equitable portion of the insurance premium under its contract (or would include such an item in the calculation of a fixed price), but normally a statutory indemnity agreement would not be granted under the contract.

950.7011 General contract authority indemnity.

(a) The DOE also has general contract authority to enter into indemnity agreements with its contactors. Under such authority a certain measure of protection is extended to the DOE contractor against risk of liability, but the assumption of liability by DOE will be expressly subject to the availability of appropriated funds. Prior to enactment of section 170 of the Atomic Energy Act 1954, as amended, this authority was exercised in a number of Atomic Energy Commission contracts and this type of indemnification remains in some DOE contracts.

(b) It is the policy of the DOE, subsequent to the enactment of section 170, to restrict indemnity agreements with DOE contractors, with respect to protection against public liability for a nuclear incident, to the statutory indemnity provided under section 170. However, it is recognized that circumstances may exist under which a DOE contractor may be exposed to a risk of public liability for a nuclear occurrence which would not be covered by the statutory indemnity.

(c) While it is normally DOE policy to require its contractors to obtain insurance coverage against public liability for nonnuclear risks, there may be circumstances in which a contractual indemnity may be warranted to protect a DOE contractor against liability for uninsured nonnuclear risks.

(d) If circumstances as mentioned in paragraph (b) or (c) of this section do arise, it shall be the responsibility of the Heads of Contracting Activities to submit to the Head of the Agency or designee for review and decision, all pertinent information concerning the need for, or desirability of, providing a general authority indemnity to a DOE contractor.

(e) Where the indemnified risk is nonnuclear, the amount of general authority indemnity extended to a fixed-price contractor should normally have a maximum obligation equivalent to the amount of insurance that the contractor usually carries to cover such risks in its other commerical operations or, if the risk involved is dissimilar to those normally encountered by the contractor, the amount that it otherwise would have reasonably procured to insure this contract risk.

(f) In the event that a DOE contractor has been extended both a statutory indemnity and a general authority indemnity, the general authority indemnity will not apply to the extent that the statutory indemnity applies.

(g) The provisons of this subsection do not restrict or affect the policy of DOE to pay its cost-reimbursement type contractors for the allowable cost of losses and expenses incurred in the performance of the contact work, within the maximum amount of the contract obligation.

PART 951—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Subpart 951.1—Contractor Use of Government Supply Sources

Sec.
951.101 Policy.
951.102 Authorization to use Government supply sources.
951.103 Ordering from Government supply sources.

Subpart 951.2—Contractor Use of Interagency Motor Pool Vehicles

951.201 Policy.

Subpart 951.70—Contractor Employee Travel Discounts

951.7000 Scope of subpart.
951.7001 General policy.
951.7002 Responsibilities.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 12042, Mar. 28, 1984, unless otherwise noted.

Subpart 951.1—Contractor Use of Government Supply Sources

951.101 Policy.

(a) It is DOE policy that contractors performing under cost-reimbursement contracts should meet their requirements from Government sources of supply when these sources are available to them, and if it is economically advantageous or otherwise in the best interest of the Government.

951.102 Authorization to use Government supply sources.

(a) The Head of the Contracting Activity may authorize contractors performing under cost-reimbursement contracts and subcontractors performing under cost-reimbursement contracts, where all higher tier contracts and subcontracts are cost-type, to use Government supply sources in accordance with the requirements and procedures in FAR Part 51, DOE PMR 41 CFR 109-26, and any necessary approval from the agency involved. This authority may be redelegated to the level of contracting officer. Direct acquisition by the DOE, rather than by a contractor under cost-reimbursement contracts, shall be required where deemed necessary by the Head of the Contracting Activity in order to carry out special requirements of appropriation acts or other applicable laws relating to particular items.

(c)(1) The DOE central point of contact for the assignment, correction, or deletion of FEDSTRIP activity address codes is the Property and Equipment Management Division, Office of Policy, Procurement and Assistance Management Directorate, Headquarters.

(e)(4)(iii) Materials, supplies, and equipment acquired from Government sources of supply under the procedures described herein must be used exclusively in connection with Government work, except as otherwise authorized by the Head of the Contracting Activity.

[49 FR 12042, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984]

951.103 Ordering from Government supply sources.

(b) The Procurement Executive shall be informed of instances in which GSA sources of supply are not used because of the quality of the items available from GSA or when a Federal Supply Schedule contractor refuses to honor an order.

Subpart 951.2—Contractor Use of Interagency Motor Pool Vehicles

951.201 Policy.

(a) If it is in the Government's interest, the contracting officer may authorize cost-reimbursement contractors to obtain, for official purposes only, interagency motor pool vehicles and related services, including: (1) Fuel and lubricants, (2) vehicle inspection, maintenance, and repair, (3) vehicle storage, and (4) commercially rented vehicles for short-term use under Federal Supply Schedule Industrial Group 751.

Subpart 951.70—Contractor Employee Travel Discounts

SOURCE: 54 FR 17736, Apr. 25, 1989, unless otherwise noted.

951.7000 Scope of subpart.

The General Services Administration (GSA) and, in some cases, the Department of Defense (DOD) Military Traffic Management Command negotiate agreements with commercial organizations to provide certain discounts to contractors performing travel under Government cost-reimbursable contracts. In the case of discount air fares and hotel/motel room rates, the GSA has established agreements with certain airlines and thousands of hotels/motels to extend discounts which were previously only available to Federal employees on official travel status. DOD has negotiated agreements with car rental companies for special rates with unlimited mileage which were also to be used by only Federal employees on official Government business. GSA Bulletin Federal Property Management Regulations (FPMRs) A-95, dated August 19, 1988, makes these three travel discounts available to Government cost-reimbursable contractors at the option of the vendor.

951.7001 General policy.

Contracting officers will encourage DOE cost-reimbursable contractors (CRCs) to use Government travel discounts to the maximum extent practicable in accordance with contractual terms and conditions. Vendors providing the service may require that Government contractor employees furnish a letter of identification signed by the authorizing contracting officer. Contracting officers shall provide CRCs with a "Standard Letter of Identification" when appropriate to do so. An example of a "Standard Letter of Identification" is included as an attachment to GSA Bulletin A-95 and at 952.251-70(e).

(a) FPMR Temporary Regulation A-30 governs the use of contract airlines and provides that CRCs working for the Government are authorized, but not required, to obtain the same contract fares offered to Federal employees if the contract air carrier has agreed to such an arrangement. FPMR Temporary Regulation A-30 further provides that CRCs may obtain contract fares by use of a Government Transportation Request, Standard Form 1169, cash or personal credit card. The Federal Travel Directory (FTD) (ISSN: 0278-0941), published monthly by GSA, identifies air carriers that have agreed to permit CRCs to purchase contract fares when traveling on official Government business.

(b) The Hotel/Motel Discount Section of the FTD lists all participating lodging locations with which GSA has negotiated rates for use by Federal travelers. The directory lists rates and facilities, and identifies those which also offer their Federal discount rates to Government contractors. Hotels/motels participating in travel discounts may, at their option, extend the reduced rates to not only CRCs but to employees of firms working under any type of Government contract. Hotels/motels usually require identification signed by the contracting officer (see above).

(c) Participating car rental firms offering discounted rates to Federal travelers, including those offering discount rates to Government contractor employees, are published in the "Rental Car Information" section of the FTD. Car rental firms which extend the discounted rates to CRCs are identified and should be used as the first source of supply for contractor car rental needs. GSA Bulletin FPMR G-173 and supplement 1 thereto provide guidelines and overall procedures to be used in obtaining discount car rental rates. CRCs should check with the individual car rental firms for details and identification requirements. Accepted methods of payment include cash and personal credit cards.

951.7002 Responsibilities.

Contracting officers will include in all cost-reimbursable solicitations and resulting contracts, or contract modifications, the provision or clause, as applicable, at 952.251-70 when significant costs involving travel by air carrier, ground transportation by rental car and lodging at a hotel or motel will be required in connection with the performance of the contract. Contracting officers may furnish Government contractors with the identification letter for presentation to contract airline, hotel/motel or car rental firm (see 951.7001 above), depending upon the requirements of the vendor.

SUBCHAPTER H—CLAUSES AND FORMS

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 952.0—General

Sec.

952.000 Scope of part.
952.001 General policy.

Subpart 952.1—Instructions for Using Provisions and Clauses

952.102-1 Incorporation by reference.

Subpart 952.2—Text of Provisions and Clauses

952.202 Clauses related to definitions.
952.202-1 Definitions.
952.204 Clauses related to administrative matters.
952.204-2 Security requirements.
952.204-70 Classification.
952.204-71 Sensitive foreign nations controls.
952.204-72 Disclosure of information.
952.204-73 Foreign ownership, control, or influence over contractor (Representation).
952.204-74 Foreign ownership, control, or influence over contractor.
952.208 Clauses related to required sources of supply.
952.208-7 Tagging of leased vehicles.
952.208-70 Printing.
952.209 Clauses related to contractor's qualifications.
952.209-70 Organizational conflicts of interest—disclosure or representation.
952.209-71 Organizational conflicts of interest—general.
952.209-72 Organizational conflicts of interest—special clause.
952.212 Clauses related to contract delivery or performance.
952.212-70 Priorities and allocations for energy programs (solicitations).
952.212-71 Priorities and allocations for energy programs (contracts).
952.212-72 Uniform Reporting System.
952.212-73 Cost and schedule control systems criteria.
952.214 Clauses related to sealed bidding.
952.214-27 Price reduction for defective cost or pricing data—modifications—sealed bidding.
952.215 Clauses related to contracting by negotiation.
952.215-18 Order of precedence.
952.215-22 Price reduction for defective cost or pricing data.

Sec.

952.215-23 Price reduction for defective cost or pricing data—modifications.
952.215-70 Required subcontractor representations and certifications.
952.215-71 Simplified representations and certifications—negotiated acquisition.
952.215-72 Simplified representations and certifications—sealed bid.
952.216 Clauses related to types of contracts.
952.216-7 Allowable cost and payment.
952.216-15 Predetermined indirect cost rates.
952.217-70 Acquisition of real property.
952.219 Clauses related to small business.
952.219-9 Small business and small disadvantaged business subcontracting plan.
952.223 Clauses related to environment, conservation, and occupational safety.
952.223-71 Safety and health (Government-owned or leased facility).
952.223-72 Radiation protection and nuclear criticality.
952.223-73 [Reserved]
952.223-74 Nuclear facility safety applicability.
952.223-75 Preservation of individual occupational radiation exposure records.
952.224-70 Paperwork Reduction Act.
952.227 Provisions and clauses related to patents, technical data and copyrights.
952.227-70 [Reserved]
952.227-71 Patent rights—small business firms or nonprofit organizations.
952.227-72 [Reserved]
952.227-73 Additional technical data requirements.
952.227-74 [Reserved]
952.227-75 Rights in technical data—long form.
952.227-76 Rights in data—special works.
952.227-77 Rights in technical data clause—short form.
952.227-78 Rights in technical data—facility.
952.227-79 Limited rights in proprietary data.
952.227-80 Technical data certification.
952.227-81 Royalty Payments Certification.
952.227-82 Rights to proposal data.
952.227-83 Rights in technical data solicitation representation.
952.227-84 Notice of right to request patent waiver.
952.231-70 Date of incurrence of cost.
952.233-2 Service of protest.
952.235-70 Key personnel.
952.236 Construction and architect-engineer contracts.
952.236-70 Administrative terms for architect-engineer contracts.

Sec.
952.236-71 Inspection in Architect-Engineer contracts.
952.236-72 Nonrefundable fee for plans and specifications.
952.245 Clauses related to Government property.
952.245-2 Government property (fixed-price contracts).
952.245-5 Government property (cost-reimbursement, time-and-materials, or labor-hour contracts).
952.247-70 Foreign travel.
952.249 Clauses related to terminaton.
952.249-70 Termination clause for cost-reimbursement architect-engineer contracts.
952.250 Clauses related to indemnification of contractors.
952.250-70 Nuclear hazards indemnity.
952.250-71 Nuclear hazards indemnity—product liability.
952.250-72 Indemnity assurance to architect-engineer or supplier prior to operation of a production or utilization facility.
952.251-70 Contractor employee travel discounts.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 12042, Mar. 28, 1984, unless otherwise noted.

Subpart 952.0—General

952.000 Scope of part.

This part implements FAR Part 52 which sets forth contract clauses for use in connection with the acquisition of personal property and nonpersonal services (including construction), and supplements, as well as modifies, FAR Part 52 by prescribing certain modifications to be made to FAR clauses when used in DOE contracts and specifying certain DOE contract clauses to be used in addition to or in place of such FAR clauses.

952.001 General policy.

It is DOE policy to use the prescribed FAR and DOE contract clauses wherever practicable. Uniformity in the use of contract clauses helps to ensure impartial treatment of all contractors, expedites negotiation and contract review, and facilitates contract administration.

Supbart 952.1—Instructions for Using Provisions and Clauses

952.102-1 Incorporation by reference.

(a) Preprinted standard contract clauses (clause sets) and solicitation representations and certifications provisions will be maintained by the Office of Policy for use by DOE contracting activities during the initial Federal Acquisition Regulations System familiarization period. The clause sets contain the FAR and DEAR clauses required for specific contract types. Contracting Activities will be responsible for including necessary additions and alterations in individual contracts to ascertain that the clauses are current and appropriate to the circumstances of the individual contract. The concept of preprinted clause sets is designed to reduce the review burden on both the Contracting Activities and Department's contractors. Use of the preprinted clause sets reduces the review burden for an individual contract award since once the clause sets have been reviewed and understood for a particular contract type, individual contact reviews can be limited to examination of the alterations and additions used in conjunction with the preprinted clause sets. This practice eliminates the confusion and expense of the Department's contractors which would be caused were each contracting activity to pursue its own approach regarding contract clauses.

(b) At a later date, when the FAR and DEAR clause requirements are familiar to both DOE personnel and the Department's contractors, the Department will consider incorporation by reference. Incorporation by reference is the practice of reducing the bulk of contract documents by listing only the title, regulatory citation, and date of a particular clause rather than its full text. The full text of the clause can be obtained by referring to a copy of the Code of Federal Regulations, Title 48, Chapter 1 for FAR clauses or Title 48, Chapter 9 for DEAR clauses.

Subpart 952.2—Text of Provisions and Clauses

952.202 Clauses related to definitions.

952.202-1 Definitions.

(a) The contracting officer shall substitute the following for paragraph (a) of the clause at FAR 52.202-1.

(a) The term "Head of Agency" means the Secretary, Deputy Secretary or Under Secretary of the Department of Energy and the Chairman, Federal Energy Regulatory Commission.

(b) The following shall be added as paragraph (d) except it will be designated paragraph (c) if Alternate I of the clause is used.

(d) The term "DOE" means the Department of Energy and "FERC" means the Federl Energy Regulatory Commission.

[49 FR 12042, Mar. 28, 1984, as amended at 50 FR 12185, Mar. 27, 1985]

952.204 Clauses related to administrative matters.

952.204-2 Security requirements.

The following clause shall be included in contracts entered into under section 31 (research assistance) or 41 (ownership and operation of production facilities) of the Atomic Energy Act of 1954, as amended, and in other contracts and subcontracts, which involve or are likely to involve classified information.

SECURITY (APR 1984)

(a) *Responsibility.* It is the contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information, and protecting against sabotage, espionage, loss and theft, the classified documents and material in the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract and such retention is approved by the contracting officer, the contractor will complete a certificate of possession to be furnished to DOE specifying the classified matter to be retained. The certification shall identify the items and types or categories of matter retained, the conditions governing the retention of the matter, and the period of retention, if known. If the retention is approved by the contracting officer, the security provisions of the contract will continue to be applicable to the matter retained. Special nuclear material will not be retained after the completion or termination of the contract.

(b) *Regulations.* The contractor agrees to conform to all security regulations and requirements of DOE.

(c) *Definition of classified information.* The term "classified information' means Restricted Data, Formerly Restricted Data, or National Security Information.

(d) *Definition of restricted data.* The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

(e) *Definition of formerly restricted data.* The term "Formerly Restricted Data" means all data removed from the Restricted Data category under section 142 d. of the Atomic Energy Act of 1954, as amended.

(f) *Definition of National Security Information.* The term "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.

(g) *Definition of Special Nuclear Material (SNM).* SNM means: (1) Plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(h) *Security clearance of personnel.* The contractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.

(i) *Criminal liability.* It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the contractor or any person under the contractor's control in connection with work under this contract, may subject the contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.;* 18 U.S.C. 793 and 794; and E.O. 12356.)

(j) *Subcontracts and purchase orders.* Except as otherwise authorized in writing by the contracting officer, the contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

[49 FR 12042, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984, as amended at 52 FR 38425, Oct. 16, 1987]

952.204-70 Classification.

The following clause shall be included in all contracts which involve classified information:

CLASSIFICATION (APR 1984)

In the performance of the work under this contract, the contractor shall ensure that an Authorized Original Classifier or Derivative Classifier shall assign classifications to all documents, material, and equipment originated or generated under the contract in accordance with classification regulations and guidance furnished to the contractor by the DOE. Every subcontract and purchase order issued hereunder involving the origination or generation of classified documents, material, or equipment shall include a provision to the effect that in the performance of such subcontract or purchase order, the subcontractor or supplier shall ensure that an Authorized Original Classifier or Derivative Classifier shall assign classifications to all such documents, materials, and equipment in accordance with classification regulations and guidance furnished to such subcontractor or supplier by the contractor.

952.204-71 Sensitive foreign nations controls.

In accordance with 904.404(d)(3), the contracting officer shall include the following clause:

SENSITIVE FOREIGN NATIONS CONTROLS (APR 1984)

(a) In connection with any activities in the performance of this contract, the contractor agrees to comply with the "Sensitive Foreign Nations Controls" requirements attached to this contract, relating to those countries, which may from time to time, be identified to the contractor by written notice as sensitive foreign nations. The contractor shall have the right to terminate its performance under this contract upon at least 60 days' prior written notice to the contracting officer if the contractor determines that it is unable, without substantially interfering with its polices or without adversely effecting its performance to continue performance of the work under this contract as a result of such notification. If the contractor elects to terminate performance, the provisions of this contract regarding termination for the convenience of the Government shall apply.

(b) The provisions of this clause shall be included in any subcontracts.

[49 FR 12042, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984]

952.204-72 Disclosure of information.

This clause may be used in place of the clauses entitled "Security," 952.204-2, and "Classification," 952.204-70, in contracts with educational institutions for research involving nuclear technology which could but is not expected to produce classified information or restricted data:

DISCLOSURE OF INFORMATION (APR 1984)

(a) It is mutually expected that the activities under this contract will not involve classified information. It is understood, however, that if in the opinion of either party, this expectation changes prior to the expiration or terminating of all activities under this contract, said party shall notify the other party accordingly in writing without delay. In any event, the contractor shall classify, safeguard, and otherwise act with respect to all classified information in accordance with applicable law and the requirements of DOE, and shall promptly inform DOE in writing if and when classified information becomes involved, or in the mutual judgment of the parties it appears likely that classified information or material may become involved. The contractor shall have the right to terminate performance of the work under this contract and in such event the provisions of this contract respecting termination for the convenience of the Government shall apply.

(b) The contractor shall not permit any individual to have access to classified information except in accordance with the Atomic Energy Act 1954, as amended, Executive Order 12356, and DOE's regulations or requirements.

(c) The term "Restricted Data" as used in this article means all data concerning the design, manufacture, or utilization of atomic weapons, the production of special nuclear material or the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act of 1954, as amended.

[49 FR 12042, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984]

952.204-73 Foreign ownership, control, or influence over contractor (Representation).

As prescribed in 904.7005(a), insert the following provision in all solicitations for contracts subject to the provisions of 904.70.

FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE OVER CONTRACTOR (APR 1984)

(a) For purposes of this provision, a foreign interest is defined as any of the following:

(1) A foreign government or foreign government agency;

(2) Any form of business enterprise organized under the laws of any country other than the United States or its possessions;

(3) Any form of business enterprise organized or incorporated under the laws of the U.S., or a State or other jurisdiction within the U.S., which is owned, controlled, or influenced by a foreign government, agency, firm, corporation, or person; or

(4) Any person who is not a U.S. citizen.

(b) Foreign ownership, control, or influence (FOCI) means the situation where the degree of ownership, control, or influence over a contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or significant quantity of special nuclear material as defined in 10 CFR Part 710 may result.

(c) If the offeror/bidder has not previously submitted responses to the following questions to DOE as part of the facility security clearance process, then it shall answer the following questions. Answer each question in either the "yes" or "no" column. If the answer is yes, furnish in detail on a separate sheet of paper all the information requested in parentheses. Copies of information which responds to these questions and which was submitted to other Government agencies may be submitted as responses to these questions if the earlier responses are accurate, complete, and current.

Question	Yes	No
1. Does a foreign interest own or have beneficial ownership in 5% of more of your organization's voting securities?		
(Identify the percentage of any class of shares or other securities issued which are owned by foreign interests, listed by country. If you answer "Yes" and have received from an investor a copy of Schedule 13D and/or Schedule 13G filed by the investors with the Securities and Exchange Commission, you are to attach a copy of Schedule 13D and/or Schedule 13G.)		
2. Does your organization own 10% or more of any foreign interest?		
(Furnish the name of the foreign interest, address by country, and the percentage owned. Include name and title of officials of your organization who occupy positions with the foreign interest, if any.)		
3. Do any foreign interests have management positions such as directors, officers, or executive personnel in your organization?		
(Furnish full information concerning the identity of the foreign interest and the position he/she holds in your organization.)		
4. Does any foreign interest control or influence, or is any foreign interest in a position to control or influence the election, appointment, or tenure of any of your directors, officers, or executive personnel?		
(Identify the foreign interest(s) and furnish full details concerning the control or influence.)		
5. Does your organization have any contracts, binding agreements, understandings, or arrangements with a foreign interest(s) that cumulatively represent 10% or more of your organization's gross income?		
(Furnish the name of the foreign interest, country, nature of agreement or involvement. Agreements include licensing, sales, patent exchange, trade secrets, agency, cartel, partnership, joint venture, proxy, etc. Give overall percentage by country as related to total income and type of services or products in general terms. If you answer "Yes" and have received from the foreign interest a copy of Schedule 13D and/or Schedule 13G filed by the foreign interest with the Securities and Exchange Commission, you are to attach a copy of Schedule 13D and/or Schedule 13G.)		
6. Is your organization indebted to foreign interests?		

Question	Yes	No
(Furnish the amount of indebtedness as related to the current assets of the organization and identify the creditor. Include specifics as to the type of indebtedness and what, if any, collateral, including voting stock, has been furnished or pledged. If any debentures are convertible, specifics about the indebtedness, collateral, if any, and what will be received after conversion are to be furnished.)		
7. Does your organization derive any income from Communist countries included in Country Groups P, Q, W, Y, and Z in Supplement No. 1 in 15 CFR Part 370?		
(Discuss in detail any income derived from Communist countries, including percentage from each such country as related to total income, and the type of services or products involved.)		
8. Is 5% or more of any class of your organization's securities held in "nominee shares," in "street names", or in some other method which does not disclose beneficial owner of equitable title?		
(Identify each foreign institutional investor holding 5 percent or more of the voting stock. Identification should include the name and address of the investor and percentage of stock held. State whether the investor has attempted to, or has, exerted any management control or influence over the appointment of directors, officers, or other key management personnel, and whether such investors have attempted to influence the policies of the corporation. If you have received from the investor a copy of the Schedule 13D and/or Schedule 13G filed by the investor with the Securities and Exchange Commission, you are to attach a copy of Schedule 13D and/or Schedule 13G.)		
9. Does your organization have interlocking directors with foreign interests?		
(Include identifying data on all such directors. If they have a security clearance, so state. Also indicate the name and address of all other corporations with which they serve in any capacity.)		
10. Are there any citizens of foreign countries employed by, or who may visit, your offices or facilities in a capacity which may permit them to have access to classified information or a significant quantity of special nuclear material?		
(Provide complete information by identify the individuals and the country of which they are citizens.)		
11. Does your organization have foreign involvement not otherwise covered in your answers to the above questions?		
(Describe the foreign involvement in detail, including why the involvement would not be reportable in the preceding questions.)		

Certification

( ) The offeror/bidder certifies that the entries made above are accurate, complete, and current to the best of my knowledge and belief and are made in good faith.

( ) The offeror/bidder certifies that the information requested above has previously been submitted to DOE as required for a facility security clearance and that the information is accurate, complete and current.

Date Certified ______

By ______

Offeror/Bidder ______

Title ______

Address ______

Signature and Date ______

(d) Prior to award of a contract under this solicitation, the DOE must determine that award of the contract to the offeror/bidder will not pose an undue risk to the common defense and security as a result of its access to classified information or a significant quantity of special nuclear material in the performance of the contract. In making the determination, the contracting officer may consider a voting trust or other arrangements proposed by the offeror/bidder to mitigate or avoid FOCI. The contracting officer may require the offeror/bidder to submit such additional information as deemed pertinent to this determination.

(e) The offeror/bidder shall require any subcontractors having access to classified information or a significant quantity of special nuclear material to submit the certifications in (c) above directly to the DOE contracting officer.

(f) Information submitted by the offeror/bidder in response to the questions in (c) above is to be used solely for purposes of evaluating foreign ownership, control, or influence and shall be treated by DOE, to the extent permitted by law, as business or financial information submitted in confidence.

[49 FR 12042, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984]

952.204–74 Foreign ownership, control, or influence over contractor.

As prescribed in 904.7005(b), insert the following contract clause in new contracts and contract modifications to existing contracts subject to 904.70.

FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE OVER CONTRACTOR (APR 1984)

(a) For purposes of this clause, a foreign interest is defined as any of the following:

(1) A foreign government or foreign government agency;

(2) Any form of business enterprise organized under the laws of any country other than the United States or its possessions;

(3) Any form of business enterprise organized or incorporated under the laws of the U.S., or a State or other jurisdiction within

the U.S., which is owned, controlled, or influenced by a foreign government, agency, firm, corporation or person; or

(4) Any person who is not a U.S. citizen.

(b) Foreign ownership, control, or influence (FOCI) means the situation where the degree of ownership, control, or influence over a contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information, special nuclear material as defined in 10 CFR Part 710, may result.

(c) For purposes of this clause, subcontractor means any subcontractor at any tier and the term "contracting officer" shall mean DOE contracting officer. When this clause is included in a subcontract, the term "contractor" shall mean subcontractor and the term "contract" shall mean subcontract.

(d) The contractor shall immediately provide the contracting officer written notice of any changes in the extent and nature of FOCI over the contractor which would affect the answers to the questions presented in DEAR 952.204-73. Further, notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the contracting officer.

(e) In those cases where a contractor has changes involving FOCI, the DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, the contracting officer shall consider proposals made by the contractor to avoid or mitigate foreign influences.

(f) If the contracting officer at any time determines that the contractor is, or is potentially, subject to FOCI, the contractor shall comply with such instructions as the contracting officer shall provide in writing to safeguard any classified information or significant quantity of special nuclear material.

(g) The contractor agrees to insert terms that conform substantially to the language of this clause including this paragraph (g) in all subcontracts under this contract that will require access to classified information or a significant quantity of special nuclear material. Additionally, the contractor shall require such subcontractors to submit a completed certification required in DEAR 952.204-73 prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the contracting officer.

(h) Information submitted by the contractor or any affected subcontractor as required pursuant to this clause shall be treated by DOE to the extent permitted by law, as business or financial information submitted in confidence to be used solely for purposes of evaluating FOCI.

(i) The requirements of this clause are in addition to the requirement that a contractor obtain and retain the security clearances required by the contract. This clause shall not operate as a limitation on DOE's rights, including its rights to terminate this contract.

(j) The contracting officer may terminate this contract for default either if the contractor fails to meet obligations imposed by this clause, e.g., provide the information required by this clause, comply with the contracting officer's instructions about safeguarding classified information, or make this clause applicable to subcontractors, or if, in the contracting officer's judgment, the contractor creates an FOCI situation in order to avoid performance or a termination for default. The contracting officer may terminate this contract for convenience if the contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

952.208 Clauses related to required sources of supply.

952.208-7 Tagging of leased vehicles.

Insert the following clause when leasing commercial vehicles for periods in excess of 60 days.

TAGGING OF LEASED VEHICLES (APR 1984)

(a) DOE intends to use U.S. Government license tags.

(b) While it is the intention that vehicles leased hereunder shall operate on Federal tags, the DOE reserves the right to utilize State tags if necessary to accomplish its mission. Should State tags be required, the contractor shall furnish the DOE the documentation required by the State to acquire such tags.

952.208-70 Printing.

Title 44, United States Code, "Public Printing and Documents," establishes policies regarding public printing and documents within the Federal Government. It provides that public printing will be accomplished by the Government Printing Office, its regional offices or authorized departmental printing plants. It provides a limited exemption for contractors. Requirements exceeding that limitation are to be accomplished utilizing Government resources. To facilitate this, contracting officers shall furnish the necessary forms and instructions to contractors, as called for by DOE Order 1340.1A, and include the following clause in all contracts:

PRINTING (APR 1984)

The contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single unit, or no more than 25,000 units in the aggregate of multiple units, will not be deemed to be printing. A unit is defined as one sheet, size 8½ by 11 inches one side only, one color. A requirement is defined as a single publication document.

(1) The term "printing" includes the following processes: composition, plate making, presswork, binding, microform publishing, or the end items produced by such processes.

(2) If fulfillment of the contract will necessitate reproduction in excess of the limits set forth above, the contractor shall notify the contracting officer in writing and obtain the contracting officer's approval prior to acquiring on DOE's behalf production, acquisition, and dissemination of printed matter. Such printing must be obtained from the Government Printing Office (GPO), a contract source designated by GPO or a Joint Committee on Printing authorized federal printing plant.

(3) Printing services not obtained in compliance with this guidance will result in the cost of such printing being disallowed.

(4) The Contractor will include in each of his subcontracts hereunder a provision substantially the same as this clause including this paragraph (4).

[49 FR 12042, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984]

952.209 Clauses related to contractor's qualifications.

952.209-70 Organizational conflicts of interest—disclosure or representation.

Use the following solicitation provision under the circumstances described at 909.570.

ORGANIZATIONAL CONFLICTS OF INTEREST
DISCLOSURE OR REPRESENTATION (APR 1984)

It is Department of Energy policy to avoid situations which place an offeror in a position where its judgment may be biased because of any past, present, or currently planned interest, financial or otherwise, the offeror may have which relates to the work to be performed pursuant to this solicitation or where the offeror's performance of such work may provide it with an unfair competitive advantage. (As used herein, "offeror" means the proposer or any of its affiliates or proposed consultants or subcontractors of any tier.) Therefore:

(a) The offeror shall provide a statement which describes in a concise manner all relevant facts concerning any past, present or currently planned interest (financial, contractural, organizational, or otherwise) relating to the work to be performed hereunder and bearing on whether the offeror has a possible organizational conflict of interest with respect to (1) being able to render impartial, technically sound, and objective assistance or advice, or (2) being given an unfair competitive advantage. The offeror may also provide relevant facts that show how its organizational structure and/or management systems limit its knowledge of possible organizational conflicts of interest relating to other divisions or sections of the organization and how that structure or system would avoid or mitigate such organizational conflict.

(b) In the absence of any relevant interests referred to above, the offeror shall submit a statement certifying that to its best knowledge and belief no such facts exist relevant to possible organizational conflicts of interest. Proposed consultants and subcontractors are responsible for submitting information and may submit it directly to the contracting officer.

(c) The Department will review the statement submitted and may require additional relevant information from the offeror. All such information, and any other relevant information known to the Department, will be used to determine whether an award to the offeror may create an organizational conflict of interest is found to exist, the Department may (1) impose appropriate conditions which avoid such conflict, (2) disqualify the offeror, or (3) determine that it is otherwise in the best interest of the United States to contract with the offeror by including appropriate conditions mitigating such conflict in the contract awarded.

(d) The refusal to provide the disclosure or representation and any additional information as required shall result in disqualification of the offeror for award. The nondisclosure or misrepresentation of any relevant interest may also result in the disqualification of the offeror for award, or if such nondisclosure or misrepresentation is discovered after award, the resulting contract may be terminated for default. The offeror may also be disqualified from subsequent related Department contracts, and be subject to such other remedial action as may be permitted or provided by law or in the resulting contract. The attention of the offeror in complying with this provision is directed to 18 U.S.C. 1001.

(e) Depending on the nature of the contract activities, the offeror may, because of possible organizational conflicts of interest, propose to exclude specific kinds of work from the statement, unless the solicitation specifically prohibits such exclusion. Any such proposed exclusion by an offeror shall be considered by the Department in the evaluation of proposals, and if the Department considers the proposed excluded work to be an essential or integral part of the required work, the proposal may be rejected as unacceptable.

(f) No award shall be made until the disclosure or representation has been evaluated by the Government. Failure to provide the disclosure or representation will be deemed to be a minor informality (FAR 14.405) and the offeror or contractor shall be required to promptly correct the omission.

952.209-71 Organizational conflicts of interest—general.

Insert the following contract clause under the circumstances described at 909.570.

Organizational Conflicts of Interest—General (Apr 1984)

(a) The contractor warrants that, to the best of his knowledge and belief, and except as otherwise disclosed, there are no relevant facts which could give rise to organizational conflicts of interest, as defined in 909.570 or that the contractor has disclosed all relevant information.

(b) The contractor agrees that, if after award, an organizational conflict of interest with respect to this contract is discovered, an immediate and full disclosure in writing shall be made to the Contracting Officer which shall include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. The Department may, however, terminate the contract for its convenience if it deems such termination to be in the best interest of the Government.

(c) In the event that the contractor was aware of an organizational conflict of interest prior to the award of this contract and did not disclose the conflict to the contracting officer, the Government may terminate the contract for default.

(d) The provisions of this clause shall be included in all subcontracts for work to be performed similar to the service provided by the prime contractor, and the terms "contract," "contractor," and "contracting officer" modified appropriately to preserve the Government's rights.

(e) Prior to a contract modification when the statement of work is modified to add new work, the period of performance is significantly increased, or the parties to the contract are changed, the Department will request and the contractor is required to submit either an organizational conflict of interest disclosure or representation or an update of the previously submitted disclosure or representation.

952.209-72 Organizational conflicts of interest—special clause.

Insert the following contract clause under the circumstance described at 909.570.

Organizational Conflicts of Interest—Special Clause (Apr 1984)

(a) *Purpose.* The primary purpose of this clause is to aid in ensuring that the contractor (1) is not biased because of its past, present, or currently planned interests (financial, contractual, organizational, or otherwise) which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) *Scope.* The restrictions described herein shall apply to performance or participation by the contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "contractor") in the activities covered by this clause as a prime contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity.

(1) *Technical consulting and management support services.*

(i) The contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefor (solicited or unsolicited) which stem directly from the contractor's performance of work under this contract. Furthermore, unless so directed in writing by the contracting officer, the Contractor shall not perform any technical consulting or management support services work under this contract on any of its products or services or the products or services of another firm if the contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the contractor from competing for follow-on contracts for technical consulting and management support services.

(ii) If the contractor under this contract prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the contracting officer, in which case the restriction in this subparagraph shall not apply.

(iii) Nothing in this paragraph shall preclude the contractor from offering or selling its standard commercial items to the Government.

(2) *Access to and use of information.*

(i) If the contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (Pub. L. 93-579), or data which has not been released or otherwise made available to the public, the contractor agrees that without prior written approval of the contracting officer it shall not: (a) Use such information for any private purpose unless the information has been released or otherwise made available to the public; (b) compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first; (c) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and (d) release such information unless such information has previously been released or otherwise made available to the public by the Department.

(ii) In addition, the contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (Pub. L. 93-579), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) The contractor shall have, subject to patent, data, and security provisions of this contract, the right to use technical data it first produces under this contract for its private purpose consistent with the Rights in Data provisions of this contract.

(c) *Disclosure after award.* (1) The contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract, an immediate and full disclosure shall be made in writing to the contracting officer which shall include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts.

The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.

(2) In the event that the contractor was aware of an organizational conflict of interest prior to the award of this contract and did not disclose the conflict to the contracting officer, the Department may terminate the contract for default.

(d) *Subcontracts.* (1) The contractor shall include this clause, including this paragraph, in subcontracts of any tier which involve performance or work of the type specified in (b)(1) of this section or access to information of the type covered in (b)(2) of this section. The terms "contract", "contractor" and "contracting officer" shall be appropriately modified to preserve the Government's rights.

(2) If a subcontract is to be issued for evaluation services or activities, technical consulting or management support services work as defined at 909.570, the contractor shall obtain for the Department a disclosure statement or representation, in accordance with DOE regulations in effect at the time, from each intended subcontractor or consultant. The contractor shall not enter into any subcontract nor engage any consultant unless the contracting officer shall have first notified the contractor that there is little or no likelihood that an organizational conflict of interest exists or that despite the existence of a conflict of interest the award is in the best interest of the Government.

(e) *Remedies.* For breach of any of the above restrictions or for nondisclosure or misrepresentation of any relevant facts required to be disclosed concerning this contract, the Government may terminate the contract for default, disqualify the contractor for subsequent related contractual efforts and pursue such other remedies as may be permitted by law or this contract.

(f) *Waiver.* Requests for waiver under this clause shall be directed in writing to the contracting officer and shall include a full description of the requested waive and the reasons in support thereof. If it is determined to be in the best interests of the Government, the contracting officer shall grant such a waiver in writing.

(g) *Modifications.* Prior to a contract modification when the statement of work is modified to add new work, the period of performance is significantly increased, or the parties to the contract are changed, the Department will request and the contractor is required to submit either an organizational conflict of interest disclosure or representation or an update of the previously submitted disclosure or representation.

[49 FR 12042, Mar. 28, 1984, as amended at 52 FR 38425, Oct. 16, 1987]

952.212 Clauses related to contract delivery or performance.

952.212-70 Priorities and allocations for energy programs (solicitations).

As prescribed in 912.304(a), insert the following provision in solicitations that will result in the award of a contract in support of DOE atomic energy programs:

Priorities and Allocations (Atomic Energy) (June 1987)

Contracts or purchase orders awarded as a result of this solicitation shall be assigned a [ ] DO-Rating; [ ] DX-Rating; and certified for national defense use in accordance with the Defense Priorities and Allocations System (DPAS) regulation (15 CFR Part 350) (Contracting officer check appropriate box).

Alternate I

As prescribed in 912.304(d), insert the following provision in solicitations in support of a program or project which may be determined to maximize domestic energy supplies:

Priorities and Allocations (Domestic Energy Supplies) (June 1987)

Contracts or purchase orders awarded as a result of this solicitation may be eligible for priorities and allocations support in accordance with 10 CFR Part 216 and section 101(c) of the Defense Production Act of 1950, as amended.

[52 FR 38425, Oct. 16, 1987]

952.212-71 Priorities and allocations for energy programs (contracts).

As prescribed in 912.304(b), insert the following clause in contracts and purchase orders that are placed in support of authorized DOE atomic energy programs pursuant to the Atomic Energy Act of 1954, as amended:

Priorities and Allocations (Atomic Energy) (June 1987)

The Contractor shall follow the provisions of Defense Priorities and Allocations System (DPAS) regulation (15 CFR Part 350) in obtaining controlled materials and other products and materials needed to fill this contract.

Alternate I

As prescribed in 912.304(e), insert the following clause in contracts if they are placed in support of programs or projects which may be determined to maximize domestic energy supplies:

Priorities and Allocations (Domestic Energy Supplies) (June 1987)

(a) This contract may be eligible for priorities and allocations support, as provided for by section 101(c) of the Defense Production Act of 1950, as amended by the Energy Policy and Conservation Act (Pub. L. 94-163, 42 U.S.C. 6201 *et seq.*) if its purpose is determined to be to maximize domestic energy supplies. Eligibility is dependent on an executive decision on a case-by-case basis with the decision being jointly made by the Departments of Energy and Commerce.

(b) DOE regulations regarding material allocations and priority performance under contracts or orders to maximize domestic energy supplies can be found at Part 216 of Title 10 of the Code of Federal Regulations (10 CFR Part 216).

(c) Additional guidance is provided by DOE Publication MA-0192, "Priorities and Allocations Support for Energy: Keeping Energy Programs on Schedule," dated August 1985, as it may from time to time be revised. Copies may be obtained by written request to: Department of Energy, Office of Scientific and Technical Information (OSTI), Post Office Box 62, Oak Ridge, Tennessee 37830.

[52 FR 38426, Oct. 16, 1987]

952.212-72 Uniform Reporting System.

Reporting on cost, schedule, and technical performance related to DOE contracts (excluding special research contracts and management and operating contracts) is controlled by DOE Order 1332.1A, Uniform Reporting System, of October 15, 1985, or any later version of the Order in effect on the effective date of the contract, and by 5 CFR 1320.6. As discussed in DEAR 904.601-71, the following clause is to be included in a contract when plans and reports are required under the Uniform Reporting System:

Uniform Reporting System (May 1987)

Contractor shall prepare and submit (postage prepaid) the plans and reports indicated on the DOE Form 1332.1, Reporting Requirements Checklist or amendments to this checklist included in this contract, to the addressees and in the specified number of copies as designated in the attachment to the checklist. The contractor shall prepare the specified plans and reports in accordance with the formats and structure set forth in DOE Order 1332.1A, or any later version in effect on the effective date of the contract. The contractor shall be responsible for levying appropriate reporting requirements on any subcontractors in such a manner to ensure that data submitted by the subcontractor to the contractor is timely and compatible with the data elements that the contractor is responsible for submitting to DOE. Plans and reports submitted in compliance with this clause are in addition to any other reporting requirements of this contract.

[52 FR 28717, Aug. 3, 1987]

952.212-73 Cost and schedule control systems criteria.

Certain DOE projects are of such significance and magnitude that responsible management calls for enhanced visibility of contractor cost and schedule performance as well as more formalized data to document their progress and to aid in decisions regarding their continuation. Any contract with a total estimated cost in excess of $50 million shall require full implementation of the DOE Cost and Schedule Control Systems Criteria. Selected projects between $2 million and $50 million may benefit from modified implementation of such a control system. In those instances where the DOE Cost and Schedule Control System Criteria are to be utilized, the contracting officer shall provide for this by including the "Cost and Schedule Control Systems Criteria for Contract Performance Measurement—Implementation Guide," Office of the Controller Publication CR-0015, in the solicitation and shall include the following clause in the contract:

COST AND SCHEDULE CONTROL SYSTEMS (APR 1984)

(a) In the performance of this contract, the contractor shall establish, maintain, and use cost and schedule control systems (management control systems) meeting the criteria set forth in the contract and as described in detail in DOE/CR-0015, "Cost and Schedule Control Systems Criteria for Contract Performance Measurement—Implementation Guide," annexed hereto and hereinafter referred to as the "Guide." Prior to acceptance by the contracting officer and within —— calendar days after contract award, the contractor shall be prepared to demonstrate systems operation to the Government to verify that the proposed systems meet the designated criteria. As a part of the review procedures, the contractor shall furnish the Government a description of the cost and schedule control systems applicable to this contract in such form and detail as indicated by the Guide, or as required by the contracting officer. The contractor agrees to provide access to all pertinent records, data, and plans as requested by representatives of the Government for the conduct of systems review.

(b) The description of the management control systems accepted by the contracting officer, identified by title and date, shall be referenced in the contract. Such systems shall be maintained and used by the contractor in the performance of this contract.

(c) Contractor changes to the reviewed systems shall be submitted for review and approval as required by the contracting officer. When contracting officer approval is required, the contracting officer shall advise the contractor of the acceptability of such changes within sixty (60) days after receipt from the contractor. When systems existing at the time of contract award do not comply with the designated criteria, adjustments necessary to assure compliance will be made at no change in contract price or fee.

(d) The contractor agrees to provide access to all pertinent records and data requested by the contracting officer, or duly authorized representative, for the purpose of permitting Government surveillance to insure continuing application of the accepted systems to this contract. Deviations from the systems description identified during contract performance shall be corrected as directed by the contracting officer.

(e) The contractor shall require that each selected subcontractor, as mutually agreed to between the Government and the contractor and as set forth in the schedule of this contract, meet the criteria for cost and schedule control systems as set forth in subcontract and shall incorporate in all such subcontracts adequate provisions for review and surveillance of subcontractor's systems to be carried out by the prime contractor, or by the Government when requested by either the prime or subcontractor.

952.214 Clauses related to sealed bidding.

[50 FR 12185, Mar. 27, 1985]

952.214-27 Price reduction for defective cost or pricing data—modifications—sealed bidding.

As prescribed in 914.201-7(b)(1), when contracting by sealed bidding insert the clause at FAR 52.214-27, Price Reduction for Defective Cost or Pricing Data—Modification—Sealed Bidding, in solicitations and contracts unless this requirement is waived pursuant to FAR 14.201-7(b)(2).

[50 FR 12185, Mar. 27, 1985]

952.215 Clauses related to contracting by negotiation.

952.215–18 Order of precedence.

Use this clause in place of the clause provided at FAR 52.215–18:

ORDER OF PRECEDENCE (APR 1984)

In the event of an inconsistency between provisions of this contract, the inconsistency shall be resolved by giving precedence as follows: (a) schedule; (b) contract clauses; or (c) other provisions of the contract, whether incorporated by reference or otherwise.

952.215–22 Price reduction for defective cost or pricing data.

As prescribed in 915.804–8(a), when contracting by negotiation, include the clause at FAR 52.215–22, Price Reduction for Defective Cost or Pricing Data, in contracts when certified cost or pricing data was obtained.

952.215–23 Price reduction for defective cost or pricing data—modifications.

As prescribed in 915.804–8(b), insert the clause at FAR 52.215–23, Price Reduction for Defective Cost or Pricing Data—Modifications, in solicitations and contracts when the clause at FAR 52.215–22 has not been included.

[50 FR 12185, Mar. 27, 1985]

952.215–70 Required subcontractor representations and certifications.

In accordance with 914.201–5(b) or 915.406–5(b), include the following notice at Section L of the uniform contract format in solicitations which contemplate award of contracts expected to include any of the clauses entitled Small Business and Small Disadvantaged Business Concern Subcontracting Plan, DEAR 952.219–9, Organizational Conflicts of Interest-General, 952.209–71 of this chapter, Organizational Conflicts of Interest-Special Clause, 952.209–72 of this chapter, Equal Opportunity, FAR 52.222–26, Clean Air and Water, FAR 52.223–1, Buy America Act-Supplies, FAR 52.225–3, or Buy America Act-Construction Materials, FAR 52.225–5.

NOTICE—SUBCONTRACTOR REPRESENTATIONS AND CERTIFICATIONS

Bidders or offerors are required to obtain the representations and certifications listed below from subcontractors prior to the award of any subcontract for furnishing supplies or services under the prime contract:

(1) Small Business Concern Representation, FAR 52.219-1, Small Disadvantaged Business Concern Representation, FAR 52.219-2, if the prime contract contains the Small Business and Small Disadvantaged Business Subcontracting Plan clause from DEAR 952.219-9;

(2) Organizational Conflicts of Interest Disclosure and Representation, DEAR 952.209-70, if the prime contract contains either of the clauses entitled Organizational Conflicts of Interest-General, DEAR 952.209-71, or Organizational Conflicts of Interest-Special Clause, DEAR 952.209-72;

(3) Certification of Nonsegregated Facilities, FAR 52.222-21, if the prime contract includes the clause entitled Equal Opportunity, FAR 52.222-26;

(4) Previous Contracts and Compliance Reports, FAR 52.222-22, if the prime contract contains the clause entitled Equal Opportunity, FAR 52.222-26;

(5) Clean Air and Water Certification, FAR 52.223-1, if the prime contract contains the clause entitled Clean Air and Water, FAR 52.223-2.

(6) Buy America Act Certification, FAR 52.225-1, if the prime contract contains either of the clauses entitled Buy America Act-Supplies, FAR 52.225-3, Buy America Act-Construction Materials, FAR 52.225-5.

[49 FR 12042, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984; 49 FR 42938, Oct. 25, 1984]

952.215–71 Simplified representations and certifications—negotiated acquisition.

As prescribed at 915.406–5 insert the following provision in solicitations:

SIMPLIFIED REPRESENTATIONS AND CERTIFICATIONS—NEGOTIATED ACQUISITIONS (AUG 1985)

In order to reduce repetitious paperwork related to various representations and certifications which must be obtained prior to the award of Federal government contracts, DOE has developed a simplified process for their submission. They have been separated into three categories:

Part I—Simplified Representations and Certifications;

Part II—Recurrent Representations and Certifications; and

Part III—Additional Representations and Certifications.

Part I is a one-page form containing a minimum amount of information which is to be submitted with every proposal. It provides the basic information necessary to process the bid or proposal. Part II contains the recurrent representations and certifications needed for all contracts. It will be requested only of successful competitors selected for award. Failure to submit Part II, upon request, will render a proposal ineligible for award. Once on record, the recurrent representations and certifications need not be completed again for a period of three years unless there is a change in one or more of the representations. Part III contains additional representations and certifications which are only when they apply to a particular acquisition. If these circumstances exist, Section K of the solicitation will contain instructions on which of these to complete. Failure to submit Part III, if requested, may render a proposal ineligible for award.

[50 FR 35961, Sept. 4, 1985]

952.215-72 Simplified representations and certifications—sealed bid.

As prescribed at 915.406-5 insert the following provision in solicitations:

SIMPLIFIED REPRESENTATIONS AND CERTIFICATION—SEALED BID (AUG 1985)

In order to reduce repetitious paperwork related to various representations and certifications which must be obtained prior to the award of Federal government contracts, DOE has developed a simplified process for their submission. They have been separated into three categories:

Part I—Simplified Representations and Certifications;

Part II—Recurrent Representations and Certifications; and,

Part III—Additional Representations and Certifications.

Part I is a one-page form containing a minimum amount of information which is to be submitted with every bid. It provides the basic information necessary to process the bid. Part II contains the recurrent representations and certifications needed for all contracts. Part II must be submitted with your bid unless one has previously been placed on record with the DOE contracting activity to which your bid is being submitted. Failure to submit Part II, with your bid, will render a bid ineligible for award. Once on record, the recurrent representations and certifications need not be completed again for a period of three years unless there is a change in one or more of the representations. Part III contains additional representations and certifications which are only needed when they apply to a particular acquisition. If these circumstances exist, Section K of the solicitation will contain instructions on which of these to complete. Failure to submit Part III with your bid, if requested, may render a bid ineligible for award.

[50 FR 35961, Sept. 4, 1985]

952.216 Clauses related to types of contracts.

952.216-7 Allowable cost and payment.

Alternate I: If the contract is with a nonprofit organization, other than an educational institution; or a State or local government, modify the clause at FAR 52.216-7 Allowable Cost and Payment by deleting from paragraph (a) the phrase "Subpart 31.2" and substituting for it "Subpart 31.7."

Alternate II: When contracting with a commercial organization modify paragraph (a) of the clause at FAR 52.216-7 by adding the phrase "as supplemented by Subpart 931.2 of the Department of Energy Acquisition Regulations (DEAR)," after the acronym "(FAR)".

952.216-15 Predetermined indirect cost rates.

Alternate: As prescribed in 916.307(j), modify paragraph (c) of the clause at FAR 52.216-15, Predetermined Indirect Cost Rates, by deleting the words "Subpart 31.3" and substituting for them "Supbart 31.6" and insert the clause in solicitations and contracts when a cost-reimbursement research and development contract with a State or local government is contemplated and predetermined indirect cost rates are to be used.

952.217-70 Acquisition of real property.

Insert the following clause when required by 917.7403(c).

ACQUISITION OF REAL PROPERTY (APR 1984)

(a) Notwithstanding any other provision of the contract, the prior approval of the contracting officer shall be obtained when, in performance of this contract, the contractor acquires or proposes to acquire use of real property by:

(1) Purchase, on the Government's behalf or in the contractor's own name, with title eventually vesting in the Government.

(2) Lease, and the Government assumes liability for, or will otherwise pay for the obligation under the lease as a reimbursable contract cost.

(3) Acquisition of temporary interest through easement, license or permit, and the Government funds the entire cost of the temporary interest.

(b) Justification of and execution of any real property acquisitions shall be in accordance and compliance with directions provided by the contracting officer.

(c) The substance of this clause, including this paragraph (c), shall be included in any subcontract occasioned by this contract under which property described in paragraph (a) of this clause shall be acquired.

952.219 Clauses related to small business.

952.219-9 Small business and small disadvantaged business subcontracting plan.

Alternate: When the clause at FAR 52.219-9 is used, modify it to substitute the following alternate paragraph (d)(10).

(d)(10) Assurances that the offeror will (i) cooperate in any studies or surveys as may be required, (ii) submit periodic reports in order to allow the Government to determine the extent of compliance by the offeror with the subcontracting plan, (iii) submit, not later than the 25th day of the succeeding month, Standard Form (SF) only, (DOE contractors need not submit SF 295) on a quarterly basis current as of the last day of March, June, September and December, and upon contract completion, in accordance with the instructions on the form except the report shall be submitted quarterly rather than semiannually and additionally shall indicate at the remarks block the number and dollar amount of awards made to labor surplus area concerns to the extent such reporting is required by the terms of their contract, and (iv) ensure that its subcontractors agree to submit SF 294 in accordance with the instructions at (iii) above.

[49 FR 12042, Mar. 28, 1984, as amended at 52 FR 38426, Oct. 16, 1987]

952.223 Clauses related to environment, conservation, and occupational safety.

952.223-71 Safety and health (Government-owned or leased facility).

The clause set forth at 970.5204-2 shall be included in all contracts and subcontracts for, and be made applicable to, work to be performed at a government-owned or leased facility where DOE has elected to assert its statutory authority to establish and enforce occupational safety and health standards applicable to the work conditions of contractor and subcontractor employees, and to the protection of the public health and safety.

952.223-72 Radiation protection and nuclear criticality.

The clause set forth herein shall be included in those contracts or subcontracts for, and be made applicable to, work to be performed at a facility where DOE does not elect to assert its statutory authority to enforce occupational safety and health standards applicable to the working conditions of contractor and subcontractor employees, but does need to enforce radiological safety and health standards pursuant to provisions of the contract or subcontract rather than by reliance upon Nuclear Regulatory Commission licensing requirements (including agreements with states under section 274 of the Atomic Energy Act).

RADIATION PROTECTION AND NUCLEAR CRITICALITY (APR 1984)

The contractor shall take all reasonable precautions in the performance of work under this contract to protect the safety and health of employees and of members of the public against the hazards of ionizing radiation and radioactive materials and shall comply with all applicable radiation protection and nuclear criticality safety standards and requirements (including reporting requirements) of DOE. The contractor shall submit a management program and implementation plan to the contracting officer for review and approval within 30 days after the effective date of this contract or modification. In the event that the contractor fails to comply with said standards and requirements of DOE, the contracting officer may, without prejudice to any other legal or contractual rights of DOE, issue an order stopping all or any part of the work. Thereafter, a start order for resumption of the work may be issued at the discretion of the contracting officer. The contractor shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.

[49 FR 12042, Mar. 28, 1984; 49 FR 38952, Oct. 2, 1984]

952.223-73 [Reserved]

952.223-74 Nuclear facility safety applicability.

The clause set forth in 970.5204-26 shall be included in all contracts and subcontracts for, and be made applicable to, work to be performed at or involving the construction, startup, operation, and decommissioning of DOE-owned nuclear facilities deemed to be exempt from nuclear regulatory licensing requirements. Any deviation in substance affecting the meaning, intent, or basic principles of this clause must be referred to the Procurement Executive for approval. Minor changes in wording which may become necessary in negotiations may be approved by the contracting officer after consultation with the General Counsel.

952.223–75 Preservation of individual occupational radiation exposure records.

This clause shall be included in all contracts containing the DOE standard clause entitled "Safety and Health" at 952.223–71 or "Radiation Protection and Nuclear Criticality" at 952.223–72 or Nuclear Facility Safety Applicability at 952.223–74.

Preservation of Individual Occupational Radiation Exposure Records (Apr 1984)

Individual occupational radiation exposure records generated in the performance of work under this contract shall be subject to inspection by DOE and shall be preserved by the contractor until disposal is authorized by DOE or at the option of the contractor delivered to DOE upon completion or termination of the contract. If the contractor exercises the foregoing option, title to such records shall vest in DOE upon delivery.

[49 FR 12042, Mar. 28, 1984; 49 FR 38952, Oct. 2, 1984]

952.224–70 Paperwork Reduction Act.

Insert the following clause if it is anticipated that information collection from 10 or more persons will be necessary under the contract.

Paperwork Reduction Act (Apr 1984)

(a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answer to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is to be used for statistical compilations of general public interest, the Federal Reports Act will apply to this contract. No plan, questionnaire, interview guide, or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).

(b) The contractor shall request the required OMB clearance from the contracting officer before expending any funds or making public contacts for the collection of data. The authority to expend funds and to proceed with the collection of data shall be in writing by the contracting officer. The contractor must plan at least 90 days for OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the contractor will be considered in accordance with the clause entitled "Excusable Delays," if such clause is applicable. If not, the period of performance may be extended pursuant to this clause if approved by the contracting officer.

952.227 Provisions and clauses related to patents, technical data and copyrights.

952.227–70 [Reserved]

952.227–71 Patent rights—small business firms or nonprofit organizations.

The following clause shall be used in contracts for research, development or demonstration work with small businesses or domestic nonprofit organizations as directed in 927.300(b).

Patent Rights—Small Business Firms or Nonprofit Organizations (Mar 1982)

(a) *Definitions.*

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code (U.S.C.).

(2) "Subject Invention" means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract.

(3) "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(4) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) "Small Business Firm" means a small business concern as defined at section 2 of Pub. L. 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standard for small business concerns involved in Government procurement, contained in 13 CFR 121.3–8, and in subcontracting, contained in 13 CFR 121.3–12, will be used.

(6) "Nonprofit Organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a)

of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(7) "Patent Counsel" means the Department of Energy (DOE) patent counsel assisting the DOE contracting activity.

(b) *Allocation of principal rights.* The contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) *Invention disclosure, election of title and filing of patent applications by contractor.*

(1) The contractor will disclose each subject invention to the Patent Counsel within two months after the inventor discloses it in writing to contractor personnel responsible for the administration of patent matters. The disclosure to the Patent Counsel shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete technical detail to convey a clear understanding, to the extent known at the time of the disclosure of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Patent Counsel, the contractor will promptly notify the Patent Counsel of the acceptance of any manuscript describing the invention or of any on sale or public use planned by the contractor.

(2) The contractor will elect in writing whether or not to retain title to any such invention by notifying the Patent Counsel within twelve months of disclosure to the contractor; provided that in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title terminates sixty days prior to the end of the statutory period.

(3) The contractor will file its initial patent application on an elected invention within two years after election or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The contractor will file patent applications in additional countries within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extention of the time for disclosure to the Patent Counsel, election, and filing, may, at the discretion of the Patent Counsel be granted.

(d) *Conditions* when the Government may obtain title.

(1) The contractor will convey the DOE, upon written request, title to any subject invention:

(i) If the contractor fails to disclose or elect the subject invention within the times specified in (c) above, or elects not to retain title.

(ii) In those contries in which the contractor fails to file patent applications within the times specified in (c) of this section; provided, however, that if the contractor has filed a patent application in a country after the times specified in (c) of this section but prior to its receipt of the written request of the Patent Counsel, the contractor shall continue to retain title in that country; or

(iii) In any country in which the contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(e) *Minimum rights to contractor.*

(1) The contractor will retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title except if the contractor fails to disclose the subject invention within the times specified in (c) above. The contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the contractor is a part and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the contractor's business to which the invention pertains.

(2) The contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 10 CFR Part 781 and 41 CFR 101-4. This license will not be revoked in that field of use or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the

public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, DOE will furnish the contractor a written notice of its intention to revoke or modify the license, and the contractor will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the contractor) after the notice to show cause why the license should not be revoked or modified. The contractor has the right to appeal, in accordance with 10 CFR Part 781, any decision concerning the revocation or modification of its license.

(f) *Contractor action to protect Government's interest.*

(1) The contractor agrees to execute or to have executed and promptly deliver to the Patent Counsel all instruments necessary to:

(i) Establish or confirm the rights the Governement has throughout the world in those subject inventions for which the contractor retains title, and

(ii) Convey title to DOE when requested under (d) above and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the contractor each subject invention made under this contract in order that the contractor can comply with the disclosure provisions of (c) above and to execute all papers necessary to file patent applications on subject inventions. The disclosure format should require, as a minimum, the information requested by (c)(1) above. The contractor shall instruct such employees through the employee agreements or suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to United States or foreign statutory bars.

(3) The contractor will notify the Patent Counsel of any decision not to continue prosecution of a patent application, pay maintenace fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) The contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by the Department of Energy. The Government has certain rights in this invention."

(5) The contractor agrees to:

(i) Provide a report prior to the close-out of the contract listing all subject inventions;

(ii) Provide notification of all subcontracts under this contract for experimental, developmental, demonstration, or research work, the identity of the patent rights clause therein, and copy of each subcontract upon request;

(iii) Provide promptly a copy of the patent application, filing date, serial number, patent number and issue date for any subject invention in any country in which the contractor has applied for a patent.

(g) *Subcontracts.*

(1) The contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or a domestic nonprofit organization. The subcontractor will retain all rights provided for the contractor in this clause, and the contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The contractor will include in all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work the patent rights clause of 41 CFR 9-9.107-5(a) or 9-9.107-6 as appropriate, modified to identify the parties.

(3) In the case of a subcontract at any tier, DOE, the subcontractor, and the contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause.

(h) *Reporting on utilization of subject inventions.* The contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and such other data and information as DOE may reasonably specify. The contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this clause. To the extent data or information supplied under this section is considered by the contractor, its licensee or assignee to be priviledged and confidential and is so marked, DOE agrees that, to the extent permitted by 35 U.S.C. 202(c)(5), it will not disclose such information to persons outside the Government.

(i) *Preference for United States industry.* Notwithstanding any other provision of this clause, the contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* The contractor agrees that with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in OMB Circular A-124 to require the contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that:

(1) Such action is necessary because the contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Special provisions for contracts with nonprofit organizations.*

If the contractor is a non profit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of DOE, except where such assignment is made to an organization which has as one of its primary functions the management of inventions and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention (provided that such assignee will be subject to the same provisions as the contractor);

(2) The contractor may not grant exclusive licenses under United States patents or patent applications in subject inventions to persons other than small business firms for a period in excess of the earlier of:

(i) Five years from first commercial sale or use of the invention; or

(ii) Eight years from the date of the exclusive license excepting that time before regulatory agencies necessary to obtain premarket clearance, unless on a case-by-case basis, DOE approves a longer exclusive license. If exclusive field of use licenses are granted, commercial sale or use in one field of use will not be deemed commercial sale or use as to other fields of use, and a first commercial sale or use with respect to a product of the invention will be deemed to end the exclusive period to different subsequent products covered by the invention;

(3) The contractor will share royalties collected on a subject invention with the inventor; and

(4) The balance of any royalties or income earned by the contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education.

(l) *Communications.* The DOE central point of contact for communications or matters relating to this clause is the Patent Counsel.

952.227-72 [Reserved]

952.227-73 Additional technical data requirements.

The following clause shall be used in contracts for research, development, or demonstration work and in other contracts as directed in 927.402-3(b).

ADDITIONAL TECHNICAL DATA REQUIREMENTS (APR 1984)

(a) In addition to the technical data specified elsewhere in this contract to be delivered, the contracting officer may at any time during the contract performance or within one year after final payment call for the contractor to deliver any technical data first produced or specifically used in the performance of this contract, except technical data pertaining to items of standard commercial design.

(b) The provisions of the Rights in Technical Data clause included in this contract are applicable to all technical data called for under this Additional Technical Data Requirements clause. Accordingly, nothing contained in this clause shall require the contractor to actually deliver any technical data, the delivery of which is excused by paragraph (e) of the Rights in Technical Data clause.

(c) When technical data are to be delivered under this clause, the contractor will be compensated for appropriate costs for converting such data into the prescribed form for reproduction, and for delivery.

[49 FR 12042, Mar 28, 1984; 49 FR 38952, Oct. 2, 1984]

952.227-74 [Reserved]

952.227-75 Rights in technical data—long form.

As directed by 927.402-3(e), the following clause shall be used in all contracts having as a purpose the conduct of research, development, or demonstration, or in contracts for supplies, or in any other contract where technical data are specified to be delivered in the contract, or where the contract contains the Additional Technical Data Requirements clause at 952.227-73.

RIGHTS IN TECHNICAL DATA—LONG FORM
(APR 1984)

(a) *Definitions.*

(1) "Technical data" means recorded information regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, or demonstration, or engineering work, or be usable or used to define a design or process, or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer software (including computer programs, computer software data bases, and computer software documentation). Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical data as used herein do not include financial reports, cost analyses, and other information incidental to contract administration.

(2) "Proprietary data" means technical data which embody trade secrets developed at private expense, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data:

(i) Are not generally known or available from other sources without obligation concerning their confidentiality;

(ii) Have not been made available by the owner to others without obligation concerning its confidentiality; and

(iii) Are not already available to the Government without obligation concerning the confidentiality.

(3) "Contract data" means technical data first produced in the performance of the contract in technical data which are specified to be delivered under the contract; technical data that may be called for under the Additional Technical Data Requirements clause of the contract, if any, or technical data actually delivered in connection with the contract.

(4) "Unlimited rights" means rights to use, duplicate, or disclose technical data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

(b) *Allocation of rights.*

(1) The Government shall have:

(i) Unlimited rights in contract data except as otherwise provided below with respect to proprietary data;

(ii) The right to remove, cancel, correct or ignore any marking not authorized by the terms of this contract on any technical data furnished hereunder, if in response to a written inquiry by DOE concerning the propriety of the markings, the contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case, DOE will notify the contractor of the action taken;

(iii) No rights under this contract in any technical data which are not contract data.

(2) The contractor shall have:

(i) The right to withhold proprietary data in accordance with the provisions of this clause; and

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this contract data it first produces in the performance of this contract, provided the data requirements of this contract have been met as of the date of the private use of such data. The contractor agrees that to the extent it receives or is given access to proprietary data or other technical, business or financial data in the form of recorded information from DOE or a DOE contractor or subcontractor, the contractor shall treat such data in accordance with any restrictive legend contained thereon, unless use is specifically authorized by prior written approval of the Contracting Officer.

(3) Nothing contained in this Rights of Technical Data clause shall imply a license to the Government under any patent or be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(c) *Copyrighted material.*

(1) The contractor shall not, without prior written authorization of the Patent Counsel, establish a claim to statutory copyright in any contract data first produced in the performance of the contract. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf a royalty-free, nonexclusive, irrevocable, worldwide license for Governmental purposes to publish, distribute, translate, duplicate exhibit and perform any such data copyrighted by the contractor.

(2) The contractor agrees not to include in the technical data delivered under the contract any material copyrighted by the contractor and not to knowingly include any material copyrighted by others, without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (c)(1) of this section. If such royalty-free license is unavailable and the contractor nevertheless determines that such copyrighted material must be included in the technical data to be delivered, rather than merely incorporated therein by reference, the contractor shall obtain the written authorization of the Contracting Officer to include such copyrighted material in the technical data prior to its delivery.

(d) *Subcontracting.* It is the responsibility of the contractor to obtain from its subcontractors technical data and rights therein, on behalf of the Government, necessary to fulfill the contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the contractor shall:

(1) Promptly submit written notice to the Contracting Officer setting forth reasons for the subcontractor refusal and other pertinent information which may expedite disposition of the matter; and

(2) Not proceed with the subcontract without the written authorization of the Contracting Officer.

(e) *Withholding of proprietary data.* Notwithstanding the inclusion of the Additional Technical Data Requirements clause in this contract or any provision of this contract specifying the delivery of technical data, the contractor may withhold proprietary data from delivery, provided that the contractor furnishes in lieu of any such proprietary data so withheld technical data disclosing the source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements ("Form, Fit and Function" data, *e.g.*, specification control drawing, catalog sheets, envelope drawings, etc.), or a general description of such proprietary data where "Form, Fit and Function" data are not applicable. The Government shall acquire no rights to any proprietary data so withheld except that such data shall be subject to the "inspection rights" provisions of paragraph (f), and, if included, the "Limited rights in proprietary data" provisions of paragraph (g) and the "Contractor licensing" provisions of paragraph (h).

(f) *Inspection rights.* Except as may be otherwise specified in this contract for specific items of proprietary data which are not subject to this paragraph, the Contracting Officer's representatives, at all reasonable times up to three years after final payment under this contract, may inspect at the contractor's facility any proprietary data withheld under paragraph (e) and not furnish under paragraph (g), if this contract includes such paragraph, for the purposes of verifying that such data properly fell within the withholding provision of paragraph (e), or for evaluating work performance.

Alternate I: Additional paragraph (g), limited rights. The following paragraph (d) shall be added to the basic clause at 952.227-75 of this section when it is determined in accordance with 927.402-3(e)(2) that delivery of proprietary data is necessary with limited rights in the Government.

(g) *Limited rights in proprietary data.* Except as may be otherwise specified in this contract as technical data which are not subject to this paragraph, the contractor shall, upon written request from the Contracting Officer at any time prior to three years after final payment under this contract, promptly deliver to the Government any "proprietary data" withheld pursuant to paragraph (e) of the Rights in Technical Data clause of this contract. The following legend and no other is authorized to be affixed on any "proprietary data" delivered pursuant to this provision, provided the "proprietary data" meets the conditions for initial withholding under paragraph (e) of the Rights in Technical Data clause. The Government will thereafter treat the "proprietary data" in accordance with such legend.

Limited Rights Legend (Apr 1984)

This technical data contains "proprietary data," furnished under "Contract No. ———" with the U.S. Department of Energy (and Purchase Order No. ——— if applicable) which may be duplicated and used by the Government with the express limitations that the "proprietary data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the contractor, except that further disclosure or use may be made solely for the following purposes:

(a) This "proprietary data" may be disclosed for evaluation purposes under the restriction that the "proprietary data" be retained in confidence and not further disclosed;

(b) This "proprietary data" may be disclosed to other contractors participating in the Government's program of which this contract is part, for information or use in connection with the work performed under their contracts and under the restriction that the "proprietary data" be retained in confidence and not be further disclosed; or

(c) This "proprietary data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "proprietary data" be retained in confidence and not be further disclosed.

This legend shall be marked on any reproduction of this data in whole or in part.

Alternate II: Additional paragraph (h), contractor licensing. The following paragraph (b) shall be added to the basic clause at 952.227-75 above when it is determined in accordance with 927.402-3(e)(3) that the Government should obtain on behalf of third parties and itself limited license rights in and to proprietary contract data.

(h) *Contract licensing.* Except as may be otherwise specified in this contract as technical data not subject to this paragraph, the contractor agrees that upon written application by DOE, it will grant to the Government and responsible third parties, for purpose of practicing a subject of this contract, a nonexclusive license in any contract data which are proprietary data, on terms and conditions reasonable under the circumstances including appropriate provisions for confidentiality; provided, however, the contractor shall not be obligated to license any such data if the contractor demonstrates to the statisfaction of the Head of the Agency or designee that:

(1) Such data are not essential to the manufacture or practice of hardware designed or fabricated, or processes developed, under this contract;

(2) Such data, in the form of results obtained by their use, have a commercially competitive alternative available or readily introducible from one or more other sources;

(3) Such data, in the form of results obtained by their use, are being supplied by the contractor or its licensees in sufficient quantity and at reasonable prices to satisfy market needs, or the contractor or its licensees have taken effective steps or within a reasonable time are expected to take effective steps to so supply such data in the form of results obtained by their use; or

(4) Such data, in the form of results obtained by their use, can be furnished by another firm skilled in the art of manufacturing items or performing processes of the same general type and character necessary to achieve the contract results.

[49 FR 12042, Mar. 28, 1984; 49 FR 38952, Oct. 2, 1984]

952.227-76 Rights in data—special works.

The following clause shall be included in contracts having as a principal purpose or task the production of copyrightable works as discussed in 927.402-3(f).

RIGHTS IN DATA—SPECIAL WORKS (APR 1984)

(a) The term "Data" as used herein means recorded information regardless of form or characteristic, such as writings, sound recordings, pictorial reproductions, drawings, or other graphic representations, and works of similar nature (whether or not copyrighted) which are specified to be delivered under this contract. The term includes data such as management studies and data produced under support services contracts but does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) All data first produced or composed in the course of or under this contract shall be the sole property of the Government. Except with the prior written permission of the contracting officer, the contractor agrees not to assert any rights at common law or in equity or establish any claim to statutory copyright in such data. The contractor shall not publish or reproduce such data in whole or in part or in any manner of form, or authorize others so to do, without the written consent of the Contracting Officer or until such time as the Government may have released such data to the public.

(c) The contractor hereby grants to or will obtain for the Government a royalty-free, nonexclusive and irrevocable license throughout the world (1) to publish, translate, reproduce, deliver, perform, use, and dispose of, in any manner, any and all data which are not first produced or composed in the performance of this contract but which are incorporated in the work furnished under this contract; and (2) to authorize others so to do.

(d) The contractor shall indemnify and save and hold harmless the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, (1) for violation of proprietary

pages tightly bound

rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use, or disposition of any data furnished under this contract; or (2) based upon any libelous, defamatory, or other unlawful matter contained in such data.

(e) Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

[49 FR 12042, Mar. 28, 1984; 49 FR 38952, Oct. 2, 1984]

952.227-77 Rights in technical data clause—short form.

As discussed in 927.402-3(g), the following clause may be used in contracts for basic research with educational institutions and in contracts with consultants and in other contracts of a similar nature. The clause shall not be used in any contract where proprietary information of the contractor may be utilized in performance of work under the contract.

RIGHTS IN TECHNICAL DATA—SHORT FORM (APR 1984)

(a) *Definitions.* The definitions of terms set forth in DEAR 927.401 apply to the extent these terms are used herein.

(b) *Allocation of rights.*

(1) The Government shall have:

(i) Unlimited rights in technical data first produced or specifically used in the performance of this contract;

(ii) The right of the contracting officer or his representative to inspect at all reasonable times up to three years after final payment under this contract all technical data first produced or specifically used in the contract (for which inspection the contractor or its subcontractor shall afford proper facilities to DOE); and

(iii) The right to have any technical data first produced or specifically used in the performance of this contract delivered to the Government as the contracting officer may from time to time direct during the progress of the work, or in any event as the contracting officer shall direct upon completion or termination of this contract.

(2) The contractor shall have:

The right to use for its private purposes, subject to patent, security or other provisions of this contract, technical data it first produces in the performance of this contract provided the data requirements of this contract have been met as of the date of the private use of such data. The contractor agrees that to the extent it receives or is given access to proprietary data or other technical, business or financial data in the form of recorded information from DOE or a DOE contractor or subcontractor, the contractor shall treat such data in accordance with any restrictive legend contained thereon, unless use is specifically authorized by prior written approval of the contracting officer.

(c) *Copyrighted material.* (1) The contractor agrees to, and does hereby grant to the Government, and to its officers, agents, servants and employees acting within the scope of their duties:

(i) A royalty-free, nonexclusive, irrevocable license to reproduce, translate, publish, use, and dispose of and to authorize others to do so, all copyrightable material first produced or composed in the performance of this contract by the contractor, its employees or any individual or concern specifically employed or assigned to originate and prepare such material; and

(ii) A license as aforesaid under any and all copyrighted or copyrightable works not first produced or composed by the contractor in the performance of this contract but which are incorporated in the material furnished under the contract, provided that such license shall be only to the extent the contractor now has, or prior to completion or final settlement of the contract may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(2) The contractor agrees that it will not knowingly include any material copyrighted by others in any written or copyrightable material furnished or delivered under this contract without a license as provided for in paragraph (c)(1)(ii) hereof, or without the consent of the copyright owner, unless it obtains specific written approval of the contracting officer for the inclusion of such copyrighted material.

[49 FR 12042, Mar. 28, 1984; 49 FR 38952, Oct. 2, 1984]

952.227-78 Rights in technical data—facility.

As discussed in 970.2702 the following clause is to be used in contracts for the operation of Government-owned facilities (GOCO's).

RIGHTS IN TECHNICAL DATA—FACILITY (APR 1984)

(a) *Definitions.*

(1) "Technical data" means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, or demonstration, or engineering work or be usable or

used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents, or computer software (including computer programs, computer software data bases and computer software documentation). Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical data as used herein does not include financial reports, cost analyses, and other information incidental to contract administration.

(2) "Proprietary data" means technical data which embody trade secrets developed at private expense, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data:

(i) Are not generally known or available from other sources without obligation concerning their confidentiality;

(ii) Have not been made available by the owner to others without obligation concerning their confidentiality; and

(iii) Are not already available to the Government without obligation concerning their confidentiality.

(3) "Unlimited rights" means rights to use, duplicate, or disclose technical data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

(b) *Allocation of rights.* (1) The Government shall have:

(i) Ownership in all technical data first produced in the performance of the contract;

(ii) The right to inspect technical data first produced or specifically used in the performance of the contract at all reasonable times (for which inspection the proper facilities shall be afforded DOE by the contractor and its subcontractors);

(iii) The right to have all technical data first produced or specifically used in the performance of the contract delivered to the Government or otherwise disposed of by the contractor, either as the contracting officer may from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this contract, provided that nothing contained in this paragraph shall require the contractor to actually deliver any technical data, the delivery of which is excused by this Rights in Technical Data clause;

(iv) Unlimited rights in technical data specifically used in the performance of this contract, except technical data pertaining to items of standard commercial design; the contractor agrees to leave a copy of such technical data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the contracting officer; provided, that if such data are proprietary, the rights of the Government in such data shall be governed solely by the provisions of optional paragraph (e) hereof—"Limited Rights in Proprietary Data;"

(v) The right to remove, cancel, correct, or ignore any marking not authorized by the terms of this contract on any technical data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the contractor of the action taken.

(2) The contractor shall have:

(i) The right to withhold its proprietary data in accordance with the provisions of this clause; and

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this contract, technical data it first produces in the performance of this contract, provided the data requirement of this contract have been met as of the date of the private use of such data. The contractor agrees that to the extent it receives or is given access to proprietary data or other technical, business or financial data in the form of recorded information from DOE or a DOE contractor or subcontractor, the contractor shall treat such data in accordance with any restrictive legend contained thereon, unless use is specifically authorized by prior written approval of the contracting officer.

(3) Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(c) *Copyrighted material.*

(1) The contractor shall not, without prior written authorization of the Patent Council establish a claim to statutory copyright in any technical data first produced in the performance of this contract. To the extent such authorisation is granted, the Government reserves for itself and others acting on its behalf, a royalty-free, nonexclusive, irrevocable, world-wide license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, and perform any such data copyrighted by the contractor.

(2) The contractor agrees not to include in the technical data delivered under the con-

tract any material copyrighted by the contractor and not to knowlingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (c)(1) above. If the contractor believes that such copyrighted material for which the license cannot be obtained must be included in the technical data to be delivered, rather than merely incorporated therein by reference, the contractor shall obtain the written authorization of the contracting officer to include such material in the technical data prior to its delivery.

(d) *Subcontracting.*

(1) Unless otherwise directed by the contracting officer, the contractor agrees to use in subcontracts having as a purpose the conduct of research, development, and demonstration work or in subcontracts for supplies, the contract clause provisions in 48 CFR 952.227-75 in accordance with the policy and procedures of 48 CFR 927.402-1, 927.402-2 and 927.402-3.

(2) It is the responsibility of the contractor to obtain from its subcontractors technical data and rights therein, on behalf of the Government, necessary to fulfill the contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the contractor shall:

(i) Promptly submit written notice to the contracting officer setting forth reasons for the subcontractor's refusal and other pertinent information which may expedite disposition of the matter; and

(ii) Not proceed with the subcontract without the written authorization of the contracting officer.

952.227-79 Limited rights in proprietary data.

As discussed in 970.2702(c) the following paragraph may be used as a supplement to the clause at 952.227-78 where it is determined that delivery of proprietarty data is necessary with limited rights in the Government.

(e) Except as may be otherwise specified in this contract as technical data which are not subject to this paragraph, the contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive paid-up license and right to use by or for the Government, any proprietary data of the contractor specifically used in the performance of this contract; provided, however, that to the extent that any proprietary data when furnished or delivered is specifically indentified by the contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government, except as provided in the "Limited Rights Legend" set forth below. All such proprietary data shall be marked with the following "Limited Rights Legend":

LIMITS RIGHTS LEGEND (APR 1984)

This Technical data contains "proprietary data," furnished under contract No. —— with the U.S. Department of Energy (and purchase order No. —— if applicable) which may be duplicated and used by the Government with the express limitations that the "proprietary data" may not be disclosed outside of the Government or be used for purposes of manufacture without prior permission of the following purposes:

(a) This " proprietary data" may be disclosed for evaluation purposes under the restriction that the "proprietary data" be retained in confidence and not be further disclosed;

(b) This "proprietary data" may be disclosed to other contractors participating in the Government's program of which this contract is a part for information for use in connection with the work performed under their contracts and under the restriction that the "proprietary data" be retained in confidence and not be further disclosed; or

(c) This "proprietary data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "proprietary data" be retained in confidence and not be further disclosed.

This legend shall be marked on any reproduction of this data in whole or in part.

952.227-80 Technical data certification.

In soliciations which may involve the acquisition of technical data, obtain the following certification and include the legend at FAR 52.215-12 and, where appropriate, the provision at 952.227-83.

TECHNICAL DATA CERTIFICATION (APR 1984)

(a) The offeror certifies that it has not delivered or is not obligated to deliver to the Government under any contract or subcontract the same or substantially the same technical data included in its offer, except as set forth below:

( ) none

( ) Contract No. (and Subcontract No., if applicable)

____

Agency name and place of delivery ——

____

____

(b) The work to be performed and the known requirements for technical data as set forth in the solicitation have been reviewed. To the best of my knowledge:

/ / There will be no technical data withheld from delivery as being proprietary data.

/ / The technical data listed on page —— of the proposal will likely be used in conjunction with the performance of work under the contract and is represented as being proprietary data to be protected from unauthorized use and disclosure and therefore to be withheld from delivery in a report not having a restrictive legend.

952.227-81 Royalty Payments Certification.

If the nature of the acquisition suggests that royalty payments may be involved, include the following certification in the solicitation.

ROYALTY PAYMENTS (APR 1984)

In order that DOE may be informed regarding royalty payments to be made by a contractor in connection with any acquisition, construction, or operation where the amount of the royalty payment is reflected in the contract price, or is to be reimbursed by the Government, check one of the following:

( ) The Contract price includes no amount representing the payment of royalty by the offeror directly to others in connection with the performance of the contract.

( ) The contract price includes an amount for royalty payment expected to be made in connection with the proposed award. The Offeror shall set forth below: (1) the amount of each payment, (2) the names of the licensor, (3) either the patent numbers involved or such other information as will permit identification of the patents and patent applications and the basis on which royalties will be paid.

952.227-82 Rights to proposal data.

Pursuant to 927.7002(d), include this clause in any contract which the decision to make the award included consideration of a technical proposal.

RIGHTS TO PROPOSAL DATA (APR 1984)

Except for technical data contained on pages —— of the contractor's proposal dated —— which are asserted by the contractor as being proprietary data, it is agreed that, as a condition of the award of this contract, and notwithstanding the provisions of any notice appearing on the proposal, the Government shall have the right to use, duplicate, disclose and have others do so for any purpose whatsoever, the technical data contained in the proposal upon which this contract is based.

952.227-83 Rights in technical data solicitation representation.

Pursuant to 927.7004-1 and 927.7004-2, include this provision, the legend at FAR 52.215-12 and the certification at 952.227-80 in solicitations which may result in contracts for research, development, or demonstration work or contracts for supplies in which delivery of required technical data is contemplated.

RIGHTS IN TECHNICAL DATA SOLICITATION INSTRUCTION (APR 1984)

The section of this solicitation which describes the work to be performed also sets forth DOE's know requirements for technical data. The Additional Technical Data Requirements clause, if included in this solicitation, provides the Government with the option to order additional technical data, the requirements for which are not known at the time of contracting. There is, however, a built-in limitation on the kind of technical data which may be required. This limitation provides that the contractor may withhold delivery of proprietary data. Accordingly, it is necessary that your proposal state that the work to be performed and the known requirements for technical data as set forth in the solicitation have been reviewed, and either state that, to the best of your knowledge, not data will be withheld, or submit a list identifying the proprietary data which, to the best of your knowledge, will likely be used in the contract performance and will be withheld.

952.227-84 Notice of right to request patent waiver.

Pursuant to 927.7005, include this provision in all solicitations which may result in contracts calling for research, development, or demonstration work.

RIGHT TO REQUEST PATENT WAIVER (APR 1984)

Offerors and prospective contractors, in accordance with applicable statutes and the Department of Energy Acquisition Regulation, have the right to request, in advance of or within 30 days after the effective data of contracting, a waiver of all or any part of the rights of the United States in subject inventions. Small business firms and domestic nonprofit organizations normally will receive the Patent Rights clause of 952.227-71 which permits the contractor to retain title to subject inventions, except in contracts for management or operation of a Government-owned research or production facility and in contracts involving exceptional circumstances or intelligence activities. Therefore small business firms and nonprofit organizations normally need not request a waiver.

952.231-70 Date of incurrence of cost.

In accordance with 931.205-32, insert the following clause when advance understandings have been negotiated regarding costs incurred prior to the contract effective date:

DATE OF INCURRENCE OF COST (APR 1984)

The Contractor shall be entitled to reimbursement for costs incurred in an amount not to exceed $ —— on or after —— which, if incurred after this contract has been entered into, would have been reimbursable under the provisions of this contract.

[49 FR 12042, Mar. 28, 1984; 49 FR 38952, Oct. 2, 1984]

952.233-2 Service of protest.

As prescribed in 933.106, add the following to the end of the clause at FAR 52.233-2:

Another copy of a protest lodged with the General Accounting Office shall be furnished to the following address:

U.S. Department of Energy
Business Clearance Division (MA-441)
Forrestal Building, Room 1I-030
1000 Independence Avenue, SW.
Washington, DC 20585

Another copy of a protest lodged with the General Services Administration Board of Contract Appeals shall be furnished to the following address:

U.S. Department of Energy
Assistant General Counsel for Procurement and Finance (GC-34)
1000 Independence Avenue, SW
Washington, DC 20585

[51 FR 31339, Sept. 3, 1986]

952.235-70 Key personnel.

In accordance with 935.070, insert this clause.

KEY PERSONNEL (APR 1984)

The personnel specified in an attachment to this contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the Contracting Officer: *Provided*, that the Contracting Officer may ratify in writing such diversion and such ratification shall constitute the consent of the Contracting Officer required by this clause. The attachment to this contract may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate.

952.236 Construction and architect-engineer contracts.

952.236-70 Administrative terms for architect-engineer contracts.

As prescribed at 936.702(a) the following additional terms shall be included in Standard Form 252, Item 6:

(a) *Description of project.* The contracting officer shall include. (As full a description as is feasible should be inserted. If the architect-engineer services are to be furnished for a construction project, describe the facilities involved, including any auxiliary facilities that may be required.)

(b) *Statement of architect-engineer services.* The contractor shall, within the time specified in the contract, or if not specified therein, in the shortest reasonable time, furnish for the construction project the architect-engineer services described below, subject to such further detailed requirements as may be appended to this contract by agreement of the parties.

NOTE A: This form of contract provides for completion of the architect-engineer services "within the shortest reasonable time." The form may be modified to provide for completion of separable parts of the work at different times.

NOTE B: When title I, II, or III services are to be furnished, the following language may be used to describe such services. Modifications in the text of the language may be made to omit inappropriate items or, where necessary, to meet particular circumstances.

TITLE I—PRELIMINARY SERVICES

(1) Conduct or arrange for, by subcontract or otherwise as approved by the Contracting Officer, and supervise all necessary topographical and other field surveys, the preparation of maps, and necessary test boring and other surface investigations.

(2) Consult and collaborate with DOE to determine the requirements which will govern the design of the project and to establish architectural and engineering criteria for such design.

(3) Conduct preliminary studies, and prepare preliminary sketches, drawings, layout plans, outline specifications, and reports

showing features and characteristics of the design proposed to meet DOE's requirements. If more than three studies, including sketches, drawings, plans, outline specifications, or documents are required because of changes initiated by DOE, an equitable adjustment in the lump-sum compensation will be made in accordance with provisions of the Changes clause.

(4) The drawings, plans, and outline specifications and documents shall be prepared in such form and furnished in such quantity as directed by DOE.

NOTE: Specific quantities of the drawings, plans, outline specifications, and documents should be indicated here or elsewhere in the contract.

(5) Prepare preliminary estimates of cost and time schedule for (i) completion of the design, working drawings, and specifications, and (ii) construction.

(6) Prepare preliminary estimates of material quantities required for construction.

TITLE II—DESIGN SERVICES

(1) Upon approval by DOE of preliminary plans and estimates, undertake the design of the construction project.

(2) Undertake restudy and redesign work due to minor deviations from the approved preliminary work as may be required by DOE.

(3) Prepare and revise, for the approval of DOE, and furnish complete sets of contract bidding documents, including working drawings, details, and specifications for construction, in such form and quantity and including such provisions as may be required by law or the directions of DOE.

NOTE: Specific quantities of drawings and specifications should be indicated here or elsewhere in the contract.

(4) Prepare, or when directed by DOE, participate with others in the preparation of a detailed estimate of the cost of construction based on the approved design and working drawings and specifications.

(5) Assist DOE in securing, analyzing, and evaluating construction bids or proposals.

(6) When requested, consult with and advise DOE on any questions which may arise in connection with the architect-engineer services described in this contract.

TITLE III—SUPERVISION OF CONSTRUCTION

(1) Furnish and maintain governing lines and benchmarks to provide horizontal and vertical controls to which construction progress may be referred.

(2) Check and approve or require revision of, all vendors' shop drawings to assure conformity with the approved design and working drawings and specifications.

(3) Inspect the execution of construction so as to assure adherence to approved working drawings and specifications.

(4) Inspect construction workmanship and materials, and equipment, and report to DOE as to their conformity or nonconformity to the approved working drawings and specifications.

(5) Make or acquire such field or laboratory tests of construction workmanship, materials, and equipment, as DOE may require or approve.

(6) Prepare estimates of reasonable amounts of increase or decrease in contract price and/or contract completion time for contract modification, evaluate proposal submitted by the constructor for such contract adjustment and make recommendations to the Contracting Officer for use in negotiating.

(7) Prepare reports and make recommendations on status of deliveries or materials and equipment as DOE may require or approve.

(8) Prepare monthly and other reports of the progress of construction, as may be required, and partial, interim, and final estimates and reports of quantities and values of construction work performed, for payment or other purposes.

(9) Furnish —— set(s) of reproducible "as-built" record drawings of the type specified by DOE and —— set(s) of marked-up specifications, showing construction as actually accomplished.

[49 FR 12042, Mar. 28, 1984; 49 FR 38952, Oct. 2, 1984]

952.236-71 Inspection in Architect-Engineer contracts.

As prescribed at 936.609-3 insert the following clause.

INSPECTION (APR 1984)

The Government, through any authorized representatives, has the right at all reasonable times, to inspect, or otherwise evaluate the work peformed or being performed hereunder and the premises in which it is being performed. If any inspection, or evaluation is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require his subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

952.236-72 Nonrefundable fee for plans and specifications.

In accordance with the requirement at 936.202 include the following in solicitations for construction.

NONREFUNDABLE FEE FOR PLANS AND SPECIFICATIONS (APR 1984)

A fee of $——— is required for the plans and specifications referenced in this solicitation. Send check or money order to ————. The fee is not refundable. Plans and specifications need not be returned.

[49 FR 12042, Mar. 28, 1984; 49 FR 38952, Oct. 2, 1984]

952.245 Clauses related to government property.

952.245-2 Government property (fixed-price contracts).

Modify FAR 52.245-2 by adding "and the DOE Acquisition Regulation Subpart 945.5," after the reference to FAR Subpart 45.5 in the first sentence of paragraphs (e)(1) and (e)(2) of the clause.

952.245-5 Government property (cost reimbursement, time-and-materials, or labor-hour contracts.)

Modify FAR 52.245-5 by adding "and DOE Acquisition Regulation Subpart 945.5" after the reference to FAR Subpart 45.5 in paragraphs (e)(1) and (e)(2) of the clause.

952.247-70 Foreign travel.

When foreign travel may be required under the contract insert the following clause.

FOREIGN TRAVEL (APR 1984)

(a) Foreign travel, when charged directly, shall be subject to the prior approval of the contracting officer for each separate trip regardless of whether funds for such travel are contained in an approved budget. Foreign travel is defined as any travel outside of Canada and the United States and its territories and possessions.

(b) Request for approval shall be submitted at least 45 days prior to the planned departure date, be on a Request for Approval of Foreign Travel form, and when applicable, include a notification of proposed soviet-bloc travel.

952.249 Clauses related to termination.

952.249-70 Termination clause for cost-reimbursement architect-engineer contracts.

In accordance with the provisions prescribed at 949.505 include the following clause in a cost-reimbursement architect-engineer contract.

TERMINATION (APR 1984)

(a) Notice of termination for default or convenience. The Contracting Officer may at any time terminate performance of the work under this contract in whole or from time to time in part for the default of the architect-engineer or for the convenience of the Government by written notice to the architect-engineer stating the ground for termination. Such termination shall be effective in the manner and upon the date specified in said notice and shall be without prejudice to any claims which the Government may have against the architect-engineer. Upon receipt of such notice and except as otherwise directed by the contracting officer, the architect-engineer shall:

(1) Stop work under the contract on the date and to the extent specified in the notice of termination;

(2) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated; and

(3) Terminate all orders and subcontracts to the extent they relate to the performance of work terminated by the notice of termination.

(b) Termination for default.

(1) If the architect-engineer refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof; or fails to complete said work within such time; or if the architect-engineer fails to perform any of the other requirements of this contract, and does not cure such failure within a period of 10 days (or such longer period as the contracting officer may authorize in writing) after receipt of notice from the contracting officer specifying such failure, the contracting officer may terminate for default the architect-engineer's right to proceed with the work as to which there has been delay, provided that the performance of the work shall not be terminated for default because of any delays in the completion of work due to unforeseeable causes beyond the control and without the fault or negligence of the architect-engineer, including, but not restricted to, acts of God, or the public enemy, acts of the Gov-

ernment in either its sovereign or contractual capacity, acts of another architect-engineer in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delay of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the architect-engineer and subarchitect-engineers or suppliers; and if the architect-engineer within ten (10) days from the beginning of any such delay (unless the contracting officer grants a further period of time prior to the date of final settlement of the contract) notifies the contracting officer in writing of the causes of delay. The contracting officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact thereon shall be final and conclusive on the parties hereto, subject only to appeal by the architect-engineer to the head of the agency or his designee in accordance with "Disputes" clause of this contract.

(2) If, after notice of termination of this contract for default under (1) above, it is determined for any reason that the architect-engineer was not in default pursuant to (1), or that the architect-engineer failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the architect-engineer pursuant to the provisions of this clause relating to excusable delays, the notice of termination shall be deemed to have been issued for the convenience of the Government under this clause, and the rights and obligations to the parties hereto shall in such event be governed accordingly.

(c) *Liability for costs on default.* If performance of the work under this contract is terminated for the default of the architect-engineer, the Government may complete or employ any other person or persons to complete the work, and the architect-engineer shall be liable to the Government for increased costs occasioned the Government by the default.

(d) *Terms of settlement.* Upon the termination of performance of work under this contract, full and complete settlement of all claims of the architect-engineer with respect to the terminated work shall be made as follows:

(1) *Assumption of contractor's obligations.* The Government shall have the right in its decision to assume all obligations, commitments, and claims that the architect-engineer may have theretofore in good faith undertaken or incurred in connection with the terminated work, the cost of which would be allowable in accordance with the provisions of this contract; and the architect-engineer shall, as a condition of receiving the payments mentioned in this article, execute and deliver all such papers and take all such steps as the contracting officer may require for the purpose of fully vesting in the Government all the rights and benefits of the architect-engineer, related to such obligations, commitments, and claims.

(2) *Payments for allowable costs.* The Government shall treat as allowable costs all expenditures made in accordance with the clause herein entitled "Allowable cost and Payment," not previously so allowed or otherwise credited.

(3) *Payment for termination expense.* If performance of work under the contract is terminated for the convenience of the Government, the Government shall reimburse the architect-engineer for such further expenditures made after the date of termination for the protection of Government property and for such legal and accounting services in connection with settlement as are required or approved by the contracting officer.

(4) *Payments on account of fixed fee.* If performance work under the contract is terminated for the convenience of the Government, the architect-engineer shall be paid that portion of the fixed fee which the work actually completed, so determined by the contracting officer, bears to the entire work under this contract less payments previously made on account of the fee. If performance of the work under the contract is terminated for the default of the architect-engineer, no further payment beyond that amount due on completed work with appropriate fee payment, shall accrue on account of the fixed price.

(5) *Computation of amount due.* In arriving at the amount, if any, due the architect-engineer under this article, there shall be deducted from what would otherwise be due (i) all unliquidated advances and all other unliquidated payments on account theretofore made to the contractor, (ii) any claims of the Government against the contractor in connection with this contract, and (iii) all deductions due under the terms of this contract and not otherwise recovered by or credited to the Government.

(6) *Property accounting and release.* The architect-engineer shall furnish the accounting for Government-owned property required by the clause entitled "Property" and the assignment, closing financial statement, and release required by the clause entitled "Allowable Cost and Payments."

(e) *Rights and remedies of the Government.* The rights and remedies of the Government provided in this article are in addition to any other rights and remedies provided by law or under this contract.

[49 FR 12042, Mar. 28, 1984; 49 FR 38952, Oct. 2, 1984]

952.250 Clauses related to indemnification of contractors.

952.250-70 Nuclear hazards indemnity.

In accordance with the provisions prescribed in Subpart 950.70 include the following clause in applicable contracts.

Nuclear Hazards Indemnity (Apr 1984)

(a) This clause is incorporated into this contract pursuant to the authority contained in subsection 170(d) of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)

(1) The definitions set out in the Act shall apply to this article.

(2) The term "contract location" means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any contractor-owned or controlled facility, installation, or site at which the contractor is engaged in the performance of contractual activity under this contract.

(3) The term "extraordinary nuclear occurrence" means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in Subpart E of 10 CFR Part 140.

(b) Except as hereafter permitted or required in writing by DOE, the contractor will not be required or provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability. DOE may at any time require in writing that the contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover public liability, arising out of or in connection with the contractual activity, provided that the costs of such financial protection will be reimbursed to the contractor by DOE.

(c)(1) To the extent that the contractor and other persons indemnified are not compensated by any financial protection, permitted or required by DOE or the Nuclear Regulatory Commission (NRC), DOE will indemnify the contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (2) of this paragraph (c); and (ii) the reasonable cost of investigating and settling claims and defending suits for damage for such public liability, provided that DOE's liability, excluding such reasonable costs, under all indemnity agreements entered into by DOE under section 170 of the Act, including this contract, shall not exceed $500 million in the aggregate for each nuclear incident occurring within the United States or $100 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

(2) The public liability referred to in paragraph (c)(1) of this section is public liability which (i) arises out of or in connection with the contractual activity; and (ii) arises out of results from:

(A) A nuclear incident which takes place at a contract location; or

(B) A nuclear incident which takes place at any other location and arises out of or in the course of the performance of contractual activity under this contract by the contractor's employees, individual consultants, borrowed personnel or other persons for the consequence of whose acts or omissions the contractor is liable, provided that such incident is not covered by any other indemnity agreement entered into by DOE or the NRC pursuant to section 170 of the Act; or

(C) A nuclear incident which arises out of or in the course of transportation of source, special nuclear, or by-product materials to or from a contract location, provided such incident is not covered by any indemnity agreement entered into by DOE with the transporting carrier, or with a carrier's organization acting for the benefit of the transporting carrier, or with a licensee of NRC, pursuant to section 170 of the Act; or

(D) A nuclear incident which involves items (such as equipment, material, facilities, or design or other data) produced or delivered under this contract, provided such incident is not covered by any other indemnity agreement entered into by DOE or NRC pursuant to section 170 of the Act.

(d) In the event of an extraordinary nuclear occurrence which:

(1) Arises out of or results from or occurs in the course of the construction, possesson, or operation of a production or utilization facility, or

(2) Arises out of or results from or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facillity, or

(3) During the course of the contract activity, arises out of or results from the possession, operation, or use by the contractor or a subcontractor of a device utilizing special nuclear material or by-product material. DOE and the contractor on behalf of itself and other persons indemnified, insofar as their interests appear, each agrees to waive:

(i) Any issue or defense as to the conduct of the claimant or fault of persons indemnified, including, but not limited to:

(A) Negligence;

(B) Contributory negligence;

(C) Assumption of risk; or

(D) Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God.

As used herein, "conduct of the claimant" includes conduct of persons through whom the claimant derives its cause of action;

(ii) Any issue or defense as to charitable or governmental immunity;

(iii) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have know, of his injury or change and the cause thereof, but in no event more than 20 years after the date of the nuclear incident. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.

(e) The waivers set forth in paragraph (d) of this clause:

(1) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

(2) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;

(3) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefore are either payable or required to be provided under any workmen's compensation or occupational disease law;

(4) Shall not apply to any claim for punitive or exemplary damages, provided, with respect to any claim for wrongful death under any State law which provides for damages only punitive in nature, this exclusion does not apply to the extent that the claimant has sustained actual damages, measured by the pecuniary injuries resulting from such death but not to exceed the maximum amount otherwise recoverable under such law.

(5) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;

(6) Shall be effective only with respect to those obligations set forth in this agreement and in insurance policies, contracts or other proof of financial protection; and

(7) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (i) the limit of liability provisions under subsection 170e of the Atomic Energy Act of 1954, as amended, and (ii) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

(f) The contractor shall give immediate written notice to DOE of any known action or claim filed or made against the contractor or other person indemnified for public liability as defined in paragraph (c)(2). Except as otherwise directed by DOE, the contractor shall furnish promptly to DOE, copies of all pertinent papers received by the contractor or filed with respect to such actions or claims. When DOE shall determine that the Government will probably be required to make indemnity payments under the provisions of (c) above, DOE shall have the right to, and shall collaborate with, the contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right (1) to require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder, and (2) to appear through the Attorney General on behalf of the contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

(g) The indemnity provided by this clause shall not apply to public liability arising out of, or in connection with, any activity that is performed at a licensed facility, and that is covered by a Nuclear Regulatory Commission indemnity agreement authorized by section 170 of the Act.

(h) The obligations of DOE under this clause shall not be affected by any failure on the part of the contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the contractor, or by the completion, termination or expiration of this contract.

(i) The parties to this contract enter into this clause upon the condition that this clause may be amended at any time by the mutual written agreement of DOE and the contractor, and that such amendment may, by its express terms, provide that it will apply to any nuclear incidents which occur thereafter.

(j) The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the Disputes clause provided, however, that the following provisions of the contract: Clause entitled, Covenant Against Contingent Fees; the clause entitled, Officials Not to Benefit; and the clause entitled, Examination of Records by Comptroller General; and any provisions later added to this contract which under applicable Federal law, including statutes, executive orders and regulations, are required to be included in agreements of the type contained in this article, shall apply to this clause.

Alternate I: The following paragraph will be included in for those contracts containing the indemnity clause executed under the general contract authority of DOE.

(k) To the extent that the Contractor is compensated by any financial protection, or is indemnified pursuant to this clause or is effectively relieved of public liability by an order or orders limiting same, pursuant to section 170e of the Atomic Energy of 1954, as amended, the provisions of clause providing General Authority Indemnity, shall not apply.

[49 FR 12042, Mar. 28, 1984; 49 FR 38952, Oct. 2, 1984]

952.250-71 Nuclear hazards indemnity—product liability.

Include the following clause as prescribed by the provisions of Subpart 950.70.

NUCLEAR HAZARDS INDEMNITY—PRODUCT LIABILITY (APR 1984)

(a) This clause is incorporated into this contract pursuant to the authority contained in section 170d of the Atomic Energy Act of 1954, as amended (hereinafter called the Act).

(1) The definitions set out in the Act shall apply to this article.

(2) The term "product delivered under the contract" means any material, equipment, device, drawing, specification, or technical data made, prepared, or acquired by the contractor in the course of performance of the contract and delivered to DOE or to any other persons as directed or approved by DOE.

(b) Except as hereafter permitted or required in writing by DOE, the contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability. DOE may at any time require in writing that the contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover public liability against which the contractor is indemnified hereunder, provided that the costs of such financial protection will be reimbursed to the contractor by DOE.

(c)(1) To the extent that the contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE or the Nuclear Regulatory Commission, (NRC), DOE will indemnify the contractor, and other persons indemnified, against (i) claims for public liability as described in subparagraph (2) of this paragraph (c); and (ii) the reasonable costs of investigating and settling claims, and defending suits for damages for such public liability, provided that DOE's liability, excluding such reasonable costs, under all indemnity agreements entered into by DOE under section 170 of the Act, including this contract, shall not exceed $500 million in the aggregate for each nuclear incident occurring within the United States or $100 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

(2) The public liability referred to in subparagraph (1) of this section is public liability which (i) arises out of, or in connection with, the contractual activity; and (ii) arises out of, or results from, a product delivered under the contract, but does not include liability for a nuclear incident which is covered by any other indemnity agreement entered into by DOE or NRC pursuant to section 170 of the Act.

(d) The contractor shall give immediate written notice to DOE of any known action or claim filed or made against the contractor or other person indemnified for public liability as defined in paragraph (c)(2). Except as otherwise directed by DOE, the contractor shall furnish promptly to DOE copies of all pertinent papers received by the contractor or filed with respect to such actions of claims. When DOE shall determine that the Government will probably be required to make indemnity payments under the provisions or (c) above; DOE shall have the right to, and shall collaborate with, the contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right, (1) to require the prior approval of DOE for payment of any claim that DOE may be required to indemnify hereunder, and (2) to appear through the Attorney General on behalf of the contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

(e) The obligations of DOE under this clause shall not be affected by any failure on the part of the contractor to fulfill its obligations under this contract, and shall be unaffected by the death, disability, or termination of existence of the contractor or by the completion, termination, or expiration of this contract.

(f) The parties to this contract enter into this article upon the condition that this clause may be amended at any time by the mutual written agreement of DOE and the contractor and that such amendment may, by its express terms, provide that it will apply to any nuclear incidents which occur thereafter.

(g) The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the Disputes clause, provided, however, that the following provisions of the contract: Clause entitled, Convenant Against Contingent Fees; Clause entitled, Officials Not to Benefit; Clause entitled, Assignment of Claims; and Clause entitled, Examination of Records by Comptroller General; and any provisions later added to this contract which, under applicable Federal law, inlcuding statutes, executive orders, and regulations, are required to be included in agreements of this type contained in this clause, shall apply to this clause.

Alternate I: The following section will be added for in those contracts containing indemnity agreements executed under the general contract authority of DOE:

(h) To the extent that the contractor is compensated by any financial protection, or is indemnified pursuant to this clause, or is effectively relieved of public liability by an order or orders limiting same pursuant to section 170e of the Atomic Energy Act of 1954, as amended, the provisions of clause providing General Authority Indemnity, shall not apply.

[49 FR 12042, Mar. 28, 1984; 49 FR 38952, Oct. 2, 1984]

952.250-72 Indemnity assurance to architect-engineer or supplier prior to operation of a production or utilization facility.

Include the following clause in accordance with the provisions of Subpart 950.70.

INDEMNITY ASSURANCE TO ARCHITECT-ENGINEER OR SUPPLIER PRIOR TO OPERATION OF A PRODUCTION OR UTILIZATION FACILITY (APR 1984)

(a)(1) The definitions set out in the Atomic Energy Act of 1954, as amended (hereinafter called the Act), shall apply to this clause.

(2) The services or supplies furnished under this agreement are intended to be used in connection with the construction and/or operation of a production or utilization facility.

(3) DOE will use its best efforts to include in any contract for the operation of such facility, an agreement based on the then current approved form of indemnity agreement under section 170d of the Atomic Energy Act of 1954, as amended, whereby DOE will indemnify all persons indemnified, including the contractor, against public liability for nuclear incidents arising out of or in connection with contractual activities under the contract for the operation of said facility in accordance with the authority provided in subsection 170d of the Act.

(4)(i) DOE will enter into an indemnity agreement in accordance with the authority provided in subsection 170d of the Act with the contractor, without further consideration from the contractor, at any time all of the following circumstances are present:

(A) The services or supplies furnished under this contract are being used in connection with any activity or situation which involves a risk of substantial nuclear incident; and

(B) there is not in effect an indemnity agreement as described in subparagraph (3) of this clause; and

(C) DOE's authority to enter into agreements of indemnification under section 170(d) of the Act has not expired or been so amended as to deprive DOE of authority to enter into such an agreement.

(b) In that agreement, DOE will indemnify the contractor and other persons indemnified against public liability arising out of, or in connection with, the contractual activity of this contract.

(c) Such agreement will be based on the then current approved form of section 170d indemnity agreement used in contracts between DOE and its contractors, and shall further include an obligation to indemnify the contractor, and persons indemnified for such public liability arising out of, or resulting from, nuclear incidents occurring between the time when the services or supplies furnished under this contract are used in connection with any activity or situation which involves risk of a substantial nuclear incident and the time when such agreement is executed.

(d) The indemnity provided by DOE under all indemnity agreements entered into by DOE under section 170 of the Act, including this agreement, shall not exceed $500 million in the aggregate for each nuclear incident, without regard to the number of persons indemnified, excluding the reasonable costs of investigating and settling claims and defending suits for damages, provided, however, that with respect to incidents occurring outside the United States, such aggregate indemnity shall not exceed

$100 million, including such reasonable costs.

952.251-70 Contractor employee travel discounts.

As prescribed in Subpart 951.70, the following provision/clause will be included in all cost-reimbursable solicitations and resulting contracts, or contract modifications, as applicable.

CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS (APRIL 1989)

Consistent with contract-authorized travel requirements, contractor employees shall make use of the travel discounts offered to Federal travelers, through use of contracted airlines discount air fares, hotels and motels lodging rates and car rental companies, when use of such discounts would result in lower overall trip costs and the discounted services are reasonably available to contractor employees performing official Government contract business. Vendors providing these services may require that the contractor employee traveling on Government business be furnished with a letter of identification signed by the authorized contracting officer.

(a) *Contracted airlines.* Airlines participating in travel discounts are listed in the Federal Travel Directory (FTD), published monthly by the General Services Administration (GSA). Regulations governing the use of contracted airlines are contained in the Federal Property Management Regulation (FPMR), Temporary Regulation A-30. Temporary Regulation A-30 stipulates that cost-reimbursable contractor employees may obtain discount air fares by use of a Government Transportation Request (GTR), Standard Form 1169, cash or personal credit cards. When the GTR is used, contracting officers may issue a blanket GTR for a period of not less than two weeks nor more than one month. In unusual circumstances, such as prolonged or international travel, the contracting officer may extend the period for which a blanket GTR is effective to a maximum of three months. Contractors will ensure that their employees traveling under GTR's provide the GTR number to the contracted airlines for entry on individual tickets and on month-end billings to the contractor.

(b) *Hotels/motels.* Participating hotels and motels which extend discounts are listed in the FTD, which shows rates, facilities, and identifies by code those which offer reduced rates to cost-reimbursable contractor employees while traveling on official contract business.

(c) *Car rentals.* The Military Traffic Management Command (MTMC) Department of Defense, negotiates rate agreements with car rental companies for special flat rates and unlimited mileage. Participating car rental companies which offer these terms on to cost-reimbursable contractor employees while traveling on official contract business are listed in the FTD.

(d) *Procedures for obtaining service.* (1) Identification and method of payment requirements for participating Federal contracted airlines are listed in the FTR. Travel discount air fares may be ordered by the issuance of a GTR either directly to the contractor, or to a Scheduled Airline Travel Office (SATO) or Federal Travel Management Center (FTMC), provided the letter of identification signed by the cognizant contracting officer accompanies the order. In appropriate instances, such as geographical proximity, contractors may obtain discount air fares through a DOE office or a cooperating local travel agency when neither a SATO or FTMC is available. Some airlines allow the purchase of discounted air fares with cash or credit card.

(2) In the case of hotel and motel accommodations, reservations may be made by the contractor employee directly with the hotel or motel but the employee must display, on arrival, the letter of identification and any other identification required by the hotel or motel proprietorship.

(3) For car rentals, generally the same procedures as in (d)(2) above will be followed in arranging reservations and obtaining discounts.

(e) *Standard letter of identification.* Contractors shall prepare for the authorizing contracting officer a letter of identification based on the following format:

FORMAT FOR GOVERNMENT CONTRACTORS TO QUALIFY FOR TRAVEL DISCOUNTS (TO BE TYPED ON AGENCY OFFICIAL LETTERHEAD)

To: (*Source of ticketing, accommodations or rental*)

Subject: Official Travel of Government Contractor

(*Full name of traveler*), bearer of this letter, is an employee of (*company name*) which is under contract to this agency under the Government contract (*contract number*). During the period of the contract (*give dates*), the employee is eligible and authorized to use available discount rates for contract-related travel in accordance with your contract and/or agreement with the Federal Government.

(*Signature, title and telephone number of the contracting officer*)

[54 FR 17737, Apr. 25, 1989; 54 FR 26045, June 21, 1989]

SUBCHAPTER I—AGENCY SUPPLEMENTARY REGULATIONS

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

Sec.
970.0000 Scope of part.
970.0001 Renewal of management and operating contracts.

Subpart 970.03—[Reserved]

Subpart 970.04—Administrative Matters

970.0404 Safeguarding classified information.
970.0404-1 Definitions.
970.0404-2 General.
970.0404-3 Responsibilities of contracting officers.
970.0404-4 Contract clauses.
970.0406 Uniform reporting system.
970.0407 Record retention requirements.

Subpart 970.08—Required Sources of Supplies and Services

970.0801 Excess personal property.
970.0803 Acquisition of utility services.

Subpart 970.09—Contractor Qualifications

970.0905 Organizational conflicts of interest.

Subpart 970.10—Specifications, Standards and Other Statement of Work Descriptions

970.1001 General.
970.1002 Statement of work.

Subpart 970.15—Contracting by Negotiation

970.1508 Price negotiation.
970.1508-1 Cost or pricing data.
970.1509 Fees for management and operating contracts.
970.1509-1 Fee policy.
970.1509-2 Special considerations—educational institutions.
970.1509-3 Special considerations—nonprofit organizations (other than educational institutions).
970.1509-4 Considerations and techniques for determining fees.
970.1509-5 Limitations.
970.1509-6 Fee base.
970.1509-7 Special equipment purchases.
970.1509-8 Special considerations—award fee.

Subpart 970.19—Small Business and Small Disadvantaged Business Concerns

Sec.
970.1901 General.

Subpart 970.20—[Reserved]

Subpart 970.22—Application of Labor Policies

970.2201 Basic labor policies.
970.2206 Walsh-Healey Public Contracts Act.
970.2208 Equal employment opportunity.
970.2210 Service Contract Act.
970.2270 Unemployment compensation.
970.2271 Workers' compensation insurance.
970.2272 Conduct of employees and consultants of DOE management and operating contractors.
970.2273 Administrative controls and criteria for application of the Davis-Bacon Act in operational or maintenance activities.

Subpart 970.23—Environmental, Conservation, and Occupational Safety Programs

970.2303 Hazardous materials identification and material safety.
970.2303-1 General.
970.2303-2 Clauses.

Subpart 970.25—[Reserved]

Subpart 970.27—Patents, Data, and Copyrights

970.2701 General.
970.2702 Procedures.

Subpart 970.28—Bonds and Insurance

970.2870 Indemnification.

Subpart 970.29—Taxes

970.2901 Exemptions from Federal excise taxes.
970.2902 State and local taxes.
970.2903 Contract clauses.

Subpart 970.30—Cost Accounting Standards

970.3001 General.
970.3001-1 Applicability.
970.3001-2 Limitations.

Subpart 970.31—Contract Cost Principles and Procedures

970.3100 Scope and applicability of subpart.
970.3100-1 Definitions.
970.3100-2 Responsibilities.

Sec.

970.3100-3 Deviation.
970.3101 General policy.
970.3101-1 Actual cost basis.
970.3101-2 Direct and indirect costs.
970.3101-3 General basis for reimbursement of costs.
970.3101-4 Cost determination based on audit.
970.3101-5 Contractor's system of accounting.
970.3101-6 Advance understandings on particular cost items.
970.3102 Application of cost principles.
970.3102-1 General and administrative expenses.
970.3102-2 Compensation for personal services.
970.3102-3 Cost of money.
970.3102-4 Depreciation.
970.3102-5 Employee morale, health, welfare, food service, and dormitory costs.
970.3102-6 Facilities (plant and equipment).
970.3102-7 Legislative lobbying costs.
970.3102-8 Membership in trade, business and professional organizations.
970.3102-9 Outside technical and professional consultants.
970.3102-10 Overtime, shift, and holiday premiums.
970.3102-11 Page charges in scientific journals.
970.3102-12 Plant reconversion costs.
970.3102-13 Precontract costs.
970.3102-14 Preparatory and make-ready costs.
970.3102-15 Procurement: Subcontracts and contractor-affiliated sources.
970.3102-16 Relocation costs.
970.3102-17 Travel costs.
970.3102-18 Special funds in the construction industry.
970.3102-19 Public relations and advertising.
970.3102-20 Defense of fraud proceedings.
970.3102-21 Fines and penalties.
970.3103 Contract clauses.

Subpart 970.32—Contract Financing

970.3201 General.
970.3202 Advance payments.
970.3270 Clauses.
970.3271 Special bank account agreement.

Subpart 970.36—Construction and A-E Contracts

970.3601 Special construction clause for operating contracts.

Subpart 970.49—Termination of Contracts

970.4901 General.
970.4902 Termination clause.

Sec.

Subpart 970.51—Use of Government Sources by Contractors

970.5101 Use of Government supply sources.
970.5102 Use of interagency motor pool vehicles and related services.

Subpart 970.52—Contract Clauses for Management and Operating Contracts

970.5201 General policy.
970.5202 Deviations.
970.5203 Modifications and notes to FAR clauses.
970.5203-1 Covenant against contingent fees.
970.5203-2 Examination of records by Comptroller General.
970.5203-3 Buy American Act.
970.5204 Clauses to be used in addition to or in place of the contract clauses set forth in FAR Part 52 and DEAR Part 952.
970.5204-1 Security.
970.5204-2 Safety and health (Government-owned or leased).
970.5204-3 Buy American Act—construction materials.
970.5204-4 New Mexico Gross Receipts and Compensating Tax.
970.5204-5 Disclosure of information.
970.5204-6 Nuclear hazards indemnity.
970.5204-7 Nuclear hazards indemnity—product liability.
970.5204-8 Indemnity assurance to architect-engineer or supplier prior to operation of a production or utilization facility.
970.5204-9 Accounts, records, and inspection.
970.5204-10 Foreign ownership, control, or influence over contractors (FOCI).
970.5204-11 Changes.
970.5204-12 Contractor's organization.
970.5204-13 Allowable costs and fixed-fee (Management and Operating contracts).
970.5204-14 Allowable costs and fixed-fee (support contracts).
970.5204-15 Obligation of funds.
970.5204-16 Payments and advances.
970.5204-17 Legislative lobbying cost prohibition.
970.5204-18 [Reserved]
970.5204-19 Printing clause for management and operating contracts.
970.5204-20 [Reserved]
970.5204-21 Property.
970.5204-22 Contractor purchasing system.
970.5204-23 Taxes.
970.5204-24 Subcontractor cost or pricing data.
970.5204-25 Workmanship and materials.
970.5204-26 Nuclear facility safety.

Sec.
970.5204-27 Consultant or other comparable employment services of contractor employees.
970.5204-28 Assignment.
970.5204-29 Permits or licenses.
970.5204-30 Notice of labor disputes.
970.5204-31 Litigation and claims.
970.5204-32 Required bonds and insurance-exclusive of Government property (cost-type contracts).
970.5204-33 Priorities and allocations.
970.5204-34 Sensitive foreign nations control.
970.5204-35 Controls in the national interest (unclassified contracts with educational institutions).
970.5204-36 Organizational conflicts of interest (contracts with universities where DOE has major investments in facilities but does not own or lease the land).
970.5204-37 Statement of work (management and operating contracts).
970.5204-38 Special clause for procurement of construction.
970.5204-39—970.5204-40 [Reserved]
970.5204-41 Preservation of individual occupational radiation exposure records.
970.5204-42 Key personnel.
970.5204-43 Other Government contractors.
970.5204-44 [Reserved]
970.5204-45 Termination.
970.5204-48 [Reserved]
970.5204-50 Cost of schedule control systems.
970.5204-51 [Reserved]
970.5204-52 Foreign travel.
970.5204-53 Contractor employee travel discounts.
970.5204-54 Award fee.

Subpart 970.70—Use of DOE Facilities for Work for Others

970.7000 Mission-oriented solicitation.

Subpart 970.71—Management and Operating Contractor Purchasing

970.7101 General.
970.7102 DOE responsibility.
970.7103 Policies.
970.7104 Conditions of purchasing by management and operating contractors.
970.7104-1 Contingent fees.
970.7104-2 Record retention requirements.
970.7104-3 Acquisition of utility services.
970.7104-4 [Reserved]
970.7104-5 Leasing of motor vehicles.
970.7104-6 Strategic and critical materials.
970.7104-7 Purchase of special items.
970.7104-8 Purchasing alternative determinations.
970.7104-9 Qualifications requirements.

Sec.
970.7104-10 Organizational conflicts of interest.
970.7104-11 Cost of pricing data.
970.7104-12 Small business and small disadvantaged business concerns.
970.7104-13 Labor surplus area concerns.
970.7104-14 Convict labor.
970.7104-15 Contract Work Hours and Safety Standards Act (other than construction contracts).
970.7104-16 Labor standards for contracts involving construction.
970.7104-17 Walsh-Healey Public Contracts Act.
970.7104-18 Equal employment opportunity.
970.7104-19 Service Contract Act.
970.7104-20 Special disabled and Vietnam Era veterans.
970.7104-21 Application of environmental and occupational safety and health programs.
970.7104-22 Buy American.
970.7104-23 Patents, data, and copyrights.
970.7104-24 Bonds and insurance.
970.7104-25 Indemnification.
970.7104-26 Taxes.
970.7104-27 Audit of subcontractors.
970.7104-28 Construction and architect-engineer (A-E) contracts.
970.7104-29 Quality assurance.
970.7104-30 Termination.
970.7104-31 Authorization for subcontractors' use of Government supply sources.
970.7104-32 Safeguarding classified information.
970.7104-33 Cost Accounting Standards.
970.7104-34 Clean air and water.
970.7104-35 Air transportation by U.S.-flag carriers.
970.7104-36 Acquisition of real property.
970.7104-37 Management, acquisition, and use of information resources.
970.7104-38 Privacy Act.
970.7104-39 Officials not to benefit.
970.7104-40 Subcontractor reporting systems.
970.7104-41 Employment of the handicapped.
970.7104-42 Unclassified controlled nuclear information.
970.7104-43 Government property.
970.7104-44 Foreign travel.
970.7104-45 Anti-Kickback Enforcement Act of 1986.
970.7104-46 Setoff of assigned subcontract proceeds.
970.7104-47 Additional flowdown and extension provisions.
970.7105 Purchasing from contractor-affiliated sources.
970.7106 Procedures for handling mistakes relating to management and operating contractor purchases.

Sec.

970.7107 Protest of management and operating contractor procurements.
970.7108 Review and approval.
970.7109 Advance notification.
970.7110 Nuclear material transfers.

AUTHORITY: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420) and sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99-145 (42 U.S.C. 7256a), as amended.

SOURCE: 49 FR 12063, Mar. 28, 1984, unless otherwise noted.

970.0000 Scope of part.

This part provides Departmental requirements and provisions regarding award and administration of management and operating contracts as defined at FAR Subpart 17.6 and Subpart 917.6 of this chapter. Use of a management and operating contract must be authorized by the Secretary, Deputy or Undersecretary. For administrative convenience, the subparts of this part are arranged in the same numeric sequence as the parts of the FAR. Thus, for example, requirements regarding Small Business are found at 970.19 and guidance regarding Contract Clauses is found at 970.52. To the extent possible the same subpart section and subsection Titles of the FAR are applied in this Part 970. There are some difference for convenience. When there is no specific guidance of a FAR part/ section or applicability of a FAR part/section to DOE management and operating contracts a subpart or section will not be included.

970.0001 Renewal of management and operating contracts.

(a) In accordance with applicable law, rules, or regulations and FAR 17.605, competition of existing management and operating contracts will be sought whenever it appears likely that the Government's position may be meaningfully improved in terms of cost or performance, unless it is determined that to change a contractor would be contrary to the best interest of the Government. Except in those cases where the contract specifically permits the Government to bring in a replacement contractor, it is not practical in most instances to compete a management and operating contract which includes major Government-owned facilities on contractor-owned or leased sites. In such cases, the alternatives would be to extend the contract or to allow the contract to expire and, if the work is to be continued, place all or some part of the work with another contractor at a different site.

(b) The following factors, as a minimum, shall effect whether an existing management and operating contract should be completed.

(1) Overall performance of an incumbent contractor including specific consideration of the contractor's administrative, environmental, safeguards and security, safety, health, site planning, maintenance and construction, facility management, energy conservation program considerations, cost, schedule and technical performance.

(2) Potential impact of change in contractors on programmatic activities.

(3) The likelihood that qualified industrial firms or other organizations will compete for the contract.

Subpart 970.03—[Reserved]

Subpart 970.04—Administrative Matters

970.0404 Safeguarding classified information.

970.0404-1 Definitions.

"Classified Information" means any information or material that is owned by or produced for, or is under the control of the United States Government, and determined pursuant to provisions of Executive Order 12356, April 2, 1982 (47 FR 14874, April 6, 1982), or prior orders, or as authorized under the Atomic Energy Act of 1954, as amended, to require protection against unauthorized disclosure, and is so designated.

"Restricted Data" means data which is defined in section II, of the Atomic Energy Act of 1954, as amended, as "all data concerning: (1) Design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142."

[49 FR 12063, Mar. 28, 1984; 49 FR 38952, Oct. 2, 1984]

970.0404-2 General.

(a) The basis of DOE's security requirements is the Atomic Energy Act of 1954, as amended.

(b) DOE regulations concerning national security information are codified at 10 CFR Part 1045 and Part 710. Supplemental security material is found in the DOE Directives and Orders system. Foreign ownership, control, or influence over contractors as it relates to security and discussed at 904.70 also applies to management and operating contracts. Regulations pertaining to the protection of restricted data is found under 10 CFR Part 1016.

(c) Statutory requirements to be observed in connection with the release of Restricted Data to foreign governments are contained in the Atomic Energy Act of 1954, Sections 141 and 144.

(d) Section 148 of the Atomic Energy Act (42 U.S.C. 2168) prohibits the unauthorized dissemination of unclassified nuclear information with respect to the atomic energy defense programs pertaining to:

(1) The design of production facilities or utilization facilities;

(2) Security measures (including security plans, procedures, and equipment) for the physical protection of: (i) Production or utilization facilities, (ii) nuclear material contained in such facilites, or (iii) nuclear materials in transit; or

(3) The design, manufacture, or utilization of any atomic weapon or component if the design, manufacture, or utilization of such weapon or component was contained in any information declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act.

[49 FR 12063, Mar. 28, 1984; 49 FR 38952, Oct. 2, 1984]

970.0404-3 Responsibilities of contracting officers.

(a) If access to Restricted Data may be required, during the solicitation process for a management and operating contract security clearances shall be obtained as noted in DOE Order 5631.2

(b) Management and operating contracts which may require the processing or storage of Restricted Data or Special Nuclear Material require application of the provisions of DOE Orders 5634.1; 5635.1; and 5632.2.

970.0404-4 Contract clauses.

(a) The security clauses to be used in DOE management and operating contracts are found at 970.5204. They are:

(1) *Security and Classification, 970.5204-1.* This clause is required in management and operating contracts under section 41 (ownership and operation of production facilities) of the Atomic Energy Act of 1954, as amended; and all management and operating contracts which involve classified information.

(2) [Reserved]

(3) *Sensitive foreign nation controls, 970.5204-34.* This clause is required in all management and operating contracts.

(4) *Foreign ownership, control, or influence, 970.5204-10.* The clause is required in all management and operating contracts.

(b) The clause at 970.5204-5, Disclosure of Information may be used in place of the clauses entitled "Security" and "Classification" in contracts for work that are not likely to produce classified information or restricted data.

(c) Include the clause at 952.204-73 in a solicitation for a management and operating contract.

[49 FR 12063, Mar. 28, 1984; 49 FR 38952, Oct. 2, 1984, as amended at 52 FR 38426, Oct. 16, 1987]

970.0406 Uniform reporting system.

DOE 5700.7B, Work Authorization System, of September 24, 1986, provides specific guidance with respect to the applicability of the Uniform Reporting System to management and operating contracts. It provides that the Uniform Reporting System plans and reports be used whenever management reports on work packages or tasks are necessitated by the nature of the work package. The specific plans and reports to be used and their frequency are negotiated between the program manager, through the responsible operations office, and the contractor, and will be negotiated based on the versions of the DOE Orders cited in 904.601-71 and this subsection 970.0406 in effect at the time of negotiation, and 5 CFR 1320.4 and 1320.6.

[52 FR 28717, Aug. 3, 1987]

970.0407 Record retention requirements.

The requirements of FAR Subpart 4.7 do not apply to management and operating contractors. The contract shall include clause at 970.5204-9.

[49 FR 12063, Mar. 28, 1984, as amended at 53 FR 24231, June 27, 1988]

Subpart 970.08—Required Sources of Supplies and Services

970.0801 Excess personal property.

The provisions of FAR Subpart 8.1, FPMR 41 CFR 101-43, and DOE-PMR 41 CFR 109-43 apply.

970.0803 Acquisition of utility services.

The requirements of FAR Subpart 8.3 shall be applied to management and operating contractors who are authorized to procure utility services.

(a) All utility services (except telecommunications) that are required for Government-owned and contractor-operated facilities shall generally be procured directly by DOE and not by the contractors that manage and operate these facilities for DOE.

(b) However, when it is economically advantageous or otherwise in the best interest of the Government, and subject to the provisions of 970.0803(c), Heads of Contracting Activities may authorize a contractor that manages or operates a DOE facility to procure utility services on a subcontract basis. When a contractor is authorized to subcontract for utility services under the authority of this paragraph (b), a copy of the authorization, together with a statement of justification, shall be sent to the Project and Facilities Management Office, Headquarters. Heads of Contracting Activities shall require contractors which they authorize to subcontract for utility services to comply with the requirements of 970.0803(c), dealing with the prior review of certain proposed acquisitions.

(c) Heads of Contracting Activities shall submit, to the utility element in the Office of Project and Facilities Management for Headquarters' review and approval, proposed contracts for utility services (except telecommunications), including proposed authorizations under applicable GSA area-wide contracts, and proposed memoranda of understanding for consolidated purchase, joint use, or cross-service by DOE with other Government agencies, when one of the circumstances described at FAR 8.307 applies or if the contract term is to exceed one year.

(d) Section 164 of the Atomic Energy Act of 1954 establishes special authorities relative to the acquisition of electric utility services for the Oak Ridge, Paducah, and Portsmouth installations.

[49 FR 12063, Mar. 28, 1984; 49 FR 38952, Oct. 2, 1984]

Subpart 970.09—Contractor Qualifications

970.0905 Organizational conflicts of interest.

All management and operating contracts shall contain an appropriate organizational conflict of interest clause. The disclosure or representation requirement of 909.570-6 and an appropriate clause such as those found at 952.209-71 and 952.209-72 shall be included in solicitations and resulting contracts. The contracting officer shall consider provisions which assure appropriate restraints on intercorporate relations between the contractor's organization and personnel operating the Department's facility and its parent corporate body and affiliates, including personnel access to the facility, technical transfer of information from the facility, and the availability from the facility of other advantages flowing from performance of the contract.

[49 FR 12063, Mar. 28, 1984; 49 FR 38952, Oct. 2, 1984, as amended at 53 FR 24231, June 27, 1988]

Subpart 970.10—Specifications, Standards and Other Statement of Work Descriptions

970.1001 General.

Department of Energy management and operation contracts provide for the operation, maintenance, or support, on behalf of the Department, Government-owned or controlled research, development, special production or testing facilities established wholly for or principally devoted to one or more major programs of the Department.

970.1002 Statement of work.

(a) While it is not feasible to set forth standard language which would apply to every contract situation, language must be designed for inclusion in a management and operating contract to describe clearly the work being undertaken; the controls, as appropriate, to be exercised by DOE over the performance of that work; and the relationship contemplated between the parties.

(b) The language shall also include the following with respect to subcontracting performance of the work described pursuant to (a) of this section: "The contractor shall, when directed by DOE and may, but only when authorized by DOE, enter into subcontracts for the performance of any part of the work under this clause".

(c) In management and operating contracts when the contractor is expected to perform no Davis-Bacon work with his own forces, the special clause in 970.5204-38 shall be included in the language.

(d) The provisions required above shall be set forth in a Statement of work clause to be included in the contract.

Subpart 970.15—Contracting by Negotiation

970.1508 Price negotiation.

(a) Management and operating contract prices (fee) and DOE obligations to support contract performance shall be governed by:

(1) The level of activity authorized and the amount of funds appropriated for DOE approved programs by specific program legislation;

(2) Congressional budget and reporting limitations;

(3) The amount of funds apportioned to DOE;

(4) The amount of obligational authority allotted to program officials and Approved Funding Program limitations, and

(5) The amount of funds actually available to the DOE operating activity as determined in accordance with applicable financial regulations and directives.

(b) Funds shall be obligated and made available by contract provision or modification after the funds become available for obligation for payment to support performance of DOE approved projects, tasks, work authorizations, or services.

(c) Management and operating contracts shall contain appropriate provisions to limit contractor expenditures to the overall amount of funds available and obligated. The clause at 970.5204-15 shall be used for this purpose.

970.1508-1 Cost or pricing data.

The certification requirements of FAR 15.804-2, are not applied to DOE cost-reimbursement management and operating contracts.

[49 FR 12063, Mar. 28, 1984, as amended at 53 FR 24231, June 27, 1988]

970.1509 Fees for management and operating contracts.

970.1509-1 Fee policy.

(a) DOE mangement and operating contractors, except educational institutions, may be paid a fee. The fee for a management and operating contract shall be an amount commensurate with the difficulty of the work and the level of required skills, demonstrated excellence in performance, and where applicable, an amount which recognizes contractor contributions or utilizations of their own facilities or other investment capital.

(b) Fee objectives and amounts are to be determined for each contract. Standard fees or across the board agreements will not be used or made. Due to the nature of funding management and operating contracts, it is anticipated that fees shall be established in accordance with the funding cycle; however, a longer period may be used, particulary for production efforts.

(c) Fee amounts payable on contracts for administration, management, operation, and on-site support of Government-owned facilities shall be established in accordance with this part. Amounts payable shall not exceed maximum amounts derived from the appropriate fee schedule established for this purpose. Request to pay fees in excess of the maximum will be sent to the Procurement Executive, for review and approval.

(d) Maximum fees for those management and operating contracts that provide support services shall be determined using the schedule(s) most closely related to the service(s) to be performed. This may be either the production and/or R&D schedules (in some cases this could be both schedules) or the maximum fee schedules for construction or construction management cited in 915.971. If architect-engineer services are involved, the weighted guidelines, profit-fee technique cited in 915.970 shall be applied.

(e) When a contract subject to this part requires a contractor to use its own facilities or equipment, or other resources to make its own cost investment for contract performance; e.g., when there is no letter-of-credit financing, consideration will be given to approval of fee amounts based on assigning weights to appropriate fee factors. The weighted guidelines factors developed in 915.970 may be applied for this purpose. However maximum fees as are discussed in 970.1509-1(c) and (d) shall not be exceeded without the Procurement Executives approval.

970.1509-2 Specal considerations—eductional institutions.

(a) DOE policy is generally not to pay fees for management and operating contracts with educational institutions.

(b) Notwithstanding paragraph (a) of this section it may be, under special circumstances, permissible to reimburse or pay a management allowance to any educational institution provided such allowance can be justified and has the approval of the Head of the Contracting Activity.

970.1509-3 Special consideration—nonprofit organizations (other than educational institutions).

(a) Unless there is reason to do otherwise, it is the general policy of DOE to pay fees for a mangement and operating contract with a nonprofit organization; however, it is a matter of negotiation whether a fee will be paid in a given case.

(b) In computing the amounts to be paid, the tax status of the nonprofit organization should be considered. It is difficult to establish the degree to which the fee contributes to an organization's overall net profit since the fee compensates for certain unallowable costs and certain general and administrative expenses. It should be assumed, however, there is an element of profit in the fees paid under management and operating contracts.

(c) In order to assure consideration of the tax benefits of nonprofit organizations the maximum payable fixed fee cited in the fee schedules of this subpart should be reduced by at least 25%. However, depending upon the circumstances and with appropriate justification, fees may be paid between this reduced amount and the fee amount established by the fee schedule.

970.1509-4 Considerations and techniques for determining fees.

(a) The intent of the fee policy stated in 970.1509-1 reflects recognition that a fee is remuneration to contractors for the entrepreneurial function of organizing and managing resources, the use of contractor resources (including capital resources), and the assumption of risk that all incurred costs (operating and capital) may not be reimbursable.

(b) Use of a purely cost-based structured approach for determining fee objectives and amounts for typical DOE management and operating contracts is inappropriate considering the limited level of contractor cost, capital goods, and operating capital outlays for performance of such contracts. Instead of being solely cost-based, the desirable approach calls for a structure that allows judgmental evaluation and consideration of such significant factors, as outlined below, and the selection of and assignment of appropriate fee values therefor:

(1) Management risk relating to performance, including: (i) The quality and diversity of principal work tasks required to do the job, (ii) the labor intensity of the job, (iii) the special control problems, and (iv) the advance planning, forecasting and other such requirements;

(2) The presence or absence of financial risk, including the type and terms of the contract;

(3) The relative difficulty of work, including consideration of technical and administrative knowledge, skill, experience and clarity of technical specifications;

(4) Degree and amount of contract work required to be performed by and with the contractor's own resources, including the extent to which the contractor contributes plant, equipment, computers, or working capital (labor, etc.);

(5) Duration of project;

(6) Size and operation (number of locations, plants, differing operation, etc.);

(7) Influence of alternative investment opportunities available to the contractor (i.e., the extent to which undertaking a task for the Government displaces a contractor's opportunity to make a profit with the same staff and equipment in some other field of activity).

(8) The relationship of a proposed fee to fees being paid for similar work;

(9) The extent to which the activity contemplated is fundamentally a service being furnished to the Government or is an activity in which the contractor has substantial independent interest, a factor especially pertinent to research work which is closely allied to a contractor's own program and to operations which involve furnishing research facilities which would otherwise not be available because of their large cost;

(10) Benefits which may accrue to the contractor from gaining experience and knowledge of how to do something, from establishing or enhancing a reputation, or from being enabled to hold or expand a staff whose loyalties are primarily to the contractor; and

(11) Other special considerations, including support of Government programs such as those relating to small and minority business in subcontracting, energy conservation, etc.

(c) The fee objective and amount for a particular negotiation is established by judgmental considerations of the above factors, assigning fee values as deemed appropriate for each factor, and totaling the resulting amounts.

(d) In recognition of the complexities of this fee determination process, and to assist in promoting a reasonable degree of consistency and uniformity in its application, the fee schedules in 970.1509-5 set forth the maximum amounts of fee that contracting activities are allowed to award for a particular transaction without obtaining prior approval of the Procurement Executive. In addition the fee amount established in accordance with 970.1509-4 (a), (b) and (c) shall not be exceeded without prior approval of the Procurement Executive. To facilitate application of the schedules to a contract, the payable fee amounts thereunder are related to the total expected level of cost expenditures under the contract which is defined as the fee base.

970.1509-5 Limitations.

(a) Fee schedules representing the maximum allowable fee to be paid under operating and management contracts have been established for the following management and operating contract tasks or efforts.

(1) Production/Manufacturing and

(2) Research and Development

(b) The applicable schedules and maximum fees are:

PRODUCTION EFFORTS

Fee base	Fee	Fee (percent)	Increment (percent)
Up to $1 million		7.00	7.00
1,000,000	$70,000	7.00	6.05
3,000,000	191,000	6.37	5.25
5,000,000	296,000	5.92	4.18
10,000,000	505,000	5.05	3.50
15,000,000	680,000	4.53	3.30
25,000,000	1,010,000	4.04	2.86
40,000,000	1,439,000	3.60	2.41
60,000,000	1,921,000	3.20	2.07
80,000,000	2,335,000	2.92	1.50
100,000,000	2,635,000	2.64	1.10
150,000,000	3,185,000	2.12	.60
200,000,000	3,485,000	1.74	.50
300,000,000	3,985,000	1.33	.40
400,000,000	4,385,000	1.10	.30
500,000,000	4,685,000	.94	
Over 500M	4,685,000	[1] + .30	

[1] Excess.

RESEARCH AND DEVELOPMENT EFFORTS

Fee base	Fee	Fee (percent)	Increment (percent)
$25,000	$2,500	10.00	9.74
50,000	4,938	9.87	8.97
100,000	9,420	9.42	8.22
200,000	17,640	8.82	7.64
400,000	32,920	8.23	7.28
600,000	47,480	7.91	6.92
800,000	61,320	7.67	6.69
1,000,000	74,700	7.47	6.38
3,000,000	202,300	6.74	6.11
5,000,000	324,500	6.49	5.53
10,000,000	601,000	6.01	4.82
15,000,000	842,000	5.61	4.15
25,000,000	1,257,000	5.03	3.60
40,000,000	1,797,000	4.49	3.10
60,000,000	2,417,000	4.03	2.40
80,000,000	2,897,000	3.62	1.88
100,000,000	3,273,000	3.27	1.12
150,000,000	3,833,000	2.56	.65
200,000,000	4,158,000	2.08	.55
300,000,000	4,708,000	1.57	.45
400,000,000	5,158,000	1.29	.35
500,000,000	5,508,000	1.10	
Over 500M	5,580,000	[1] + .35	

[1] Excess.

970.1509-6 Fee base.

(a) The fee base is an estimate of necessary allowable costs to which a fee factor has been applied to determine the maximum fee allowance. It represents the cost of the production or R&D work to be performed exclusive of the cost of source and special nuclear materials; estimated costs of land, buildings and facilities whether to be leased, purchased or constructed; depreciation of Government facilities; and any estimate of effort for which a separate fee is to be negotiated.

(b) The fee base, in addition to the above adjustments, shall exclude:

(1) Any part of the following types of costs which are of such magnitude or nature as to distort the technical and management effort actually required of the contractor:

(i) Estimated cost of capital equipment (other than special equipment) which the contractor procures by subcontract;

(ii) Estimated cost or price of subcontracts and other major contractor procurements; and

(iii) Other simular costs.

(2) Special equipment as defined in 970.1509-7.

(3) Estimated cost of Government-furnished materials, services and equipment;

(4) All estimates of costs not directly incurred by or reimbursed to the operating contractor;

(5) Estimates of home office or corporate general and administrative expenses that shall be reimbursed through the operating contract;

(6) Estimates of any independent research and development cost or bid and proposal expenses that may be approved under the operating contract.

(c) In calculating the fee base for application of the production schedule, the estimated cost of research and development work and of process development work which goes beyond normal technical support required to ensure continuity of operation shall be excluded. The maximum fee for such R&D and process development work is calculated separately, starting at the beginning of the R&D schedule.

(d) The schedules in this part are not intended to reflect compensation for unusual architect-engineer or construction services provided by the management and operating contractor. Such services are normally covered by special agreements based on the policies applying to architect-engineer or construction contracts. Fees paid for such services shall be in addition to the operating fees and should be calculated using the provisions of 915.9 relating to architect-engineer or construction fees.

(e) The fee schedules provide the maximum fees payable within the authority of the Head of Contracting Activity. There may be times however, when the fee schedule does not reflect an adequate compensation to the contractor (such as the use of its own facilities and capital). Proposals to compensate a contractor in excess of the maximum fee schedules shall be submitted to the Procurement Executive. Requests should contain documentation and state specifically why the contractor is entitled to additional fees. (See also, 970.1509-1(c)).

970.1509-7 Special equipment purchases.

(a) Special equipment is sometimes procured in conjunction with management and operating contracts. When a contractor procures special equipment, the DOE negotiating official shall determine separate fees for the equipment and use the schedule in 915.971-5(f).

(b) In determining appropriate fees, factors such as complexity of equipment, ratio of procurement transactions to volume of equipment to be purchased and completeness of services should be considered. Where possible, the reasonableness of the fees should be checked by their relationship to actual costs of comparable procurement services.

(c) The maximum allowable fee for such services shall not exceed the fee schedule set forth in 915.971-5(f) for such services as performed by construction contractors. The fee is based on the estimated price of the equipment being purchased.

(d) For purposes of this part, special equipment is equipment for which the purchase price is of such a magnitude compared to the cost of installation as to distort the amount of technical direction and management effort required of the contractor. Generally, special equipment is considered to be a capital-asset-type of equipment (typically equipment costing more than $1,000 and having a service life of more than two years) for which the cost of installation and handling (including unloading, hauling and warehousing) is 5%, or less, of the purchase price of the equipment. However, the determination of specific items of equipment in this category requires application of judgment and careful study of the circumstances involved in each project. This category of equipment would generally include:

(1) Major items of prefabricated process or research equipment.

(2) Major items of preassembled equipment such as packaged boilers, generators, machine tools, and large electrical equipment. In some cases, it would also include special apparatus or devices such as reactor vessels and reactor charging machines.

970.1509-8 Special considerations—award fee.

(a) When a management and operating contract is to be awarded on an award-fee basis, several special considerations are appropriate.

(b) In management and operating contracts, the base fee portion of the fee objective should not normally exceed 50% of the otherwise applicable fixed fee. However, the base amount may range from 0 to 50% of the fixed fee amount. In the event 50% is exceeded, appropriate documentation shall be entered into the contract file. In no event shall the base fee exceed 60% of the fixed fee amount.

(c) The base fee plus the amount included in the award fee pool should normally not exceed the fixed fee (as subjectively determined or as developed from the fee schedule) by more than 50%. However, in the event that the base fee is to be less than 50% of the fixed fee, the maximum potential award fee may be increased proportionately with the decreases in base fee amounts.

(d) The following maximum potential award fees shall apply in award fee contracts: (percent is stated as percent of fee schedule amounts).

Base fee (percent)	Award fee (percent)	Maximum total (percent)
50	100	150
40	120	160
30	140	170
20	160	180
10	180	190
0	200	200

(e) Prior approval of the Procurement Executive, is required for total fee (based plus award fee pool) exceeding the guidelines in paragraph (d), of this section. Additionally, in the event use of the award fee guidelines in (d), above, result in total fees which exceed or are expected to exceed the statutory limitations imposed by 10 U.S.C. 2306(d) and 41 U.S.C. 254(b), prior approval of the Procurement Executive shall be obtained.

(f) When a management and operating contract is to be awarded on an award-fee basis, the contract shall include the clause at 970.5204-54.

(g) Fee Determination Officials must be careful to ensure that all important areas of contract peformance are mentioned in the Performance Evaluation Plan, even if such areas are not assigned specific weights or percentages of award fee.

[49 FR 12063, Mar. 28, 1984, as amended at 54 FR 48614, Nov. 24, 1989]

Subpart 970.19—Small Business and Small Disadvantaged Business Concerns

970.1901 General.

(a) The clause at FAR 52.219-9 as modified by 952.219-9 shall be included in management and operating contracts.

(b) Management and operating contracts shall include a subcontracting plan which is effective for the term of the contract. Goals for the contract shall be negotiated annually when revised funding levels are determined. The plan should include provisions for revising the goals or any other sections of the plan. Such revisions shall be in writing, approved by the contracting officer, and shall be specifically made a material part of the contract.

[49 FR 12063, Mar. 28, 1984; 49 FR 38952, Oct. 2, 1984, as amended at 52 FR 38426, Oct. 16, 1987; 53 FR 24231, June 27, 1988]

Subpart 970.20—[Reserved]

Subpart 970.22—Application of Labor Policies

970.2201 Basic labor policies.

(a) Contracting officers shall in appropriate circumstances, follow the guidance in FAR Subpart 22.1 except as provided below in award and management of management and operating contracts.

(b) The extent of Government ownership of the nation's energy plant and materials, and the overriding concerns of national defense and security, impose special conditions on personnel and labor relations in the energy program, namely, continuity of vital operations at DOE installations must be assured; DOE must retain absolute authority on all questions of security; DOE reviews labor expenses under management and operating contracts as a part of its responsibility for assuring judicious expenditure of public funds. It is the intent of DOE, that personnel and labor policies throughout the energy program should reflect the best experience of American industry in aiming to achieve the type of stable labor-management relations essential to the proper development of the energy program. The following enunciates the principles upon which the DOE policy is based:

(1) *Employment standards.* (i) Management and operating contractors are expected to bring experienced, proven personnel from their private operations to staff key positions on the contract work and to recruit other well-qualified personnel as needed. Such personnel should be employed and treated during employment without discrimination by reason of race, color, religion, sex, or national origin. Contractors shall be required to take affirmative action to achieve these objectives.

(ii) The job qualifications and suitability of prospective employees should be established by the contractor prior to employment by careful personnel investigations. Such personnel investigations should include, as appropriate: A credit check; verification of high school degree/diploma or degree/diploma granted by an institution of higher learning within the last 5 years; contacts with listed personal references; contacts with listed employers for the past 3 years (excluding employment of less than 60 days duration, part-time employments, and craft/union employments); and local law enforcement checks *when* such checks are not prohibited by state or local law, statute, or regulation, and when the individual had resided in the jurisdiction where the contractor is located. Where a security clearance will be required, the applicant's job qualifications and suitability must be established before a request is made to DOE for a security clearance. When an applicant is being hired specifically for a position which shall require a DOE security clearance, the applicant shall not be placed in that position prior to the security clearance being granted by the DOE unless an exception has been obtained from the Head of the Contracting Activity or designee.

(iii) The contractor is responsible for maintaining satisfactory standards for employee qualifications, performance, conduct, and business ethics under its own personnel policies.

(2) *Security.* On all matters of security at its installations, DOE retains absolute authority and neither the security rules nor their administration are matters for collective bargaining between management and labor. Insofar as DOE security regulations affect the collective bargaining process, the security policies and regulations will be made known to both parties. To the fullest extent feasible, DOE will consult with representatives of management and labor in formulating security rules and regulations that affect the collective bargaining process.

(3) *Wages, salaries, and employee benefits.* (i) Wages, salaries, and employee benefits shall be administered in a manner designated to adapt normal industry or university practices and conditions to the contract work and to provide for appropriate review by DOE. Area practices, valid patterns, and well-established commerical or academic practices of the contractors, as appropriate, form the criteria for the establishment and adjustment of compensation schedules.

(ii) The aspects of wages, hours, and working conditions which are the substance of collective bargaining in normal organized industries will be left to the orderly processes of negotiation and agreement between DOE contractor managements and employee representatives with maximum possible freedom from Government interference.

(4) *Employee relations.* The handling of employee relations on contract work, including such matters as the conduct and discipline of the work force and the handling of employee grievances, is part of the normal management responsibility of the contractor.

(5) *Collective bargaining.* (i) DOE review of collective bargaining practices will be premised on the view that management's trusteeship for the operation of the Government facilities includes the duty to adopt practices which are fundamental to the friendly adjustment of disputes, and which experience has shown promote orderly collective bargaining relationships. Practices inconsistent with this view may be objected to, if not found to be otherwise clearly warranted.

(ii) In line with the policy of assuring continuity of operation of vital facilities, all collective bargaining agreements at Government-owned energy installations should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption to normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operations for the term of the agreement.

(iii) DOE expects its management and operating contractors and the unions representing contractor employees to cooperate fully with the Federal Mediation and Conciliation Service.

(6) *Personnel training.* DOE encourages and supports personnel training programs aimed at improving work ef-

ficiency or developing needed skills which are not otherwise obtainable.

(7) *Working conditions.* Accident, fire, health, and occupational hazards associated with DOE activities will be held to a practical minimum level and controlled in the interest of maintenance of health and prevention of accidents. To this end, contractors shall be required to maintain comprehensive continuous preventive and protective programs appropriate to the particular activities throughout all operations subject to DOE control. Appropriate financial protection in case of occupational disability must be provided employees on DOE projects.

(c) Title to payroll and associated records under certain contracts for the management and operation of DOE facilities, and for necessary miscellaneous construction incidental to the function of these facilities, shall vest in the Government. Such records are to be disposed of in accordance with DOE directions. For such contracts, the Solicitor of Labor has granted a tolerance from the Department of Labor Regulations to omit from the prescribed labor clauses the requirement for the retention of payrolls and associated records for a period of three years after completion of the contract. Under this tolerance, the records retention requirements for all labor clauses in the contract and the Fair Labor Standards Act is satisfied by disposal of such records in accordance with DOE directives.

970.2206 Walsh-Healey Public Contracts Act.

Because DOE has safety and health standards compatible with those of 41 CFR Part 50-204, the Department of Labor has agreed to accept DOE's program for inspection and evaluation of compliance, in lieu of establishing its own program of inspection and evaluation to the extent the Walsh-Healey safety and health standards are applicable to operations conducted for DOE at Government-owned and/or controlled sites and facilities.

[49 FR 12063, Mar. 28, 1984, as amended at 53 FR 24231, June 27, 1988]

970.2208 Equal employment opportunity.

The equal employment opportunity provisions of FAR Subpart 22.8 and Subpart 922.8 of this chapter, including E.O. 11246 and 41 CFR Part 60, are applicable to DOE management and operating contracts.

[49 FR 12063, Mar. 28, 1984, as amended at 53 FR 24231, June 27, 1988]

970.2210 Service Contract Act.

The Service Contract Act of 1965 is not applicable to contracts for the management and operation of DOE facilities.

[49 FR 12063, Mar. 28, 1984, as amended at 53 FR 24231, June 27, 1988]

970.2270 Unemployment compensation.

(a) Each state has its own unemployment compensation system to provide payments to workers who become unemployed involuntarily and through no fault of their own. Funds are provided for unemployment compensation benefits through a payroll tax on employers. Most DOE contractors are subject to the unemployment compensation tax laws of the states in which they are located. It is the policy to assure, both in the negotiation and administration of cost-reimbursement type contracts, that economical and practical arrangements are made and practiced with respect to unemployment compensation.

(b) *Contract exempt from state laws.* (1) Some contractors are exempt from state unemployment compensation laws, usually on grounds that they are nonprofit organizations or subdivisions of State governments. Most states, however, permit such employers to elect unemployment compensation coverage on a voluntary basis. Under such circumstances, all existing or prospective cost-reimbursement contractors shall be encouraged to provide unemployment compensation coverage or equivalent substitutes.

(2) It is also DOE policy that, prior to the award or extension of a management and operating contract, exempt contractors or prospective contractors shall be required to submit to the contracting officer a statement that they will either elect coverage or

provide equivalent substitutes for unemployment compensation, or in the alternative, submit evidence that it is impractical to do so. If any exempt contractor or prospective contractor submits that it is impractical to elect coverage or to provide an equivalent substitute, appropriate Headquarters Labor Relations staff shall review that position prior to recommending an award or extension of the contract. If there are substantial reasons for not electing coverage or for not providing equivalent substitutes, a contract may be awarded or extended. Headquarters' staff review and recommendation shall be based on such factors as:

(i) The specific provisions of the unemployment compensation law of the State;

(ii) The extent to which the establishment of special conditions on DOE work may have an adverse effect on the contractor's general policies and operating costs in its private operations;

(iii) The numerical relationship between the contractor's private work force and its employees performing only work for DOE;

(iv) The contractor's record with respect to work force stability and the general outlook with respect to future work force stability;

(v) In a replacement contractor situation, whether or not the prior contractor had coverage or suitable substitutes; and

(vi) The particular labor relations implications involved.

970.2271 Workers' compensation insurance.

(a) *Policies and requirements*—(1) *Workers' compensation insurance protects employers against liability imposed by workers' compensation laws for injury or death to employees arising out of, or in the course of, their employment.* This type of insurance is required by state laws unless employers have acceptable programs of self-insurance.

(2) *Special requirements.* Certain workers' compensation laws contain provisions which result in limiting the protection afforded persons subject to such laws. The policy with respect to these limitations as they affect persons employed by, management and operating contractors is set forth below:

(i) *Elective provisions.* Some worker's compensation laws permit an employer to elect not to be subject to its provisions. It is DOE policy to require these contractors to be subject to workers' compensation laws in jurisdictions permitting election.

(ii) *Statutory immunity.* Under the provisions of some workers' compensation laws, certain types of employers; e.g., nonprofit educational institutions, are relieved from liability. If a contractor has a statutory option to accept liability, it is DOE policy to require the contractor to do so.

(iii) *Limited medical benefits.* Some workers' compensation laws limit the liability of the employer for medical care to a maximum dollar amount or to a specified period of time. In such cases, a contractor's workers' compensation insurance policy should contain a standard extrastatutory medical coverage endorsement.

(iv) *Limits on occupational disease coverage; and employers' liability.* Some workers' compensation laws do not provide coverage for all occupational diseases. In such situations, a contractor's workers' compensation insurance policy should contain voluntary coverage for all occupational diseases.

(3) *Contractor "employees' benefit plan"—self-insurers.* The policies and requirements set forth in paragraph (2) apply where management and operating contractors purchase workers' compensation insurance. With respect to self-insured contractors, the objectives specified in paragraph (a)(2) also shall be met through primary or excess workers' compensation and employers' liability insurance policy(ies) or an approved combination thereof. "Employees' benefit plans" which were established in prior years may be continued to contrast termination at existing benefit levels.

(b) *Assignment of responsibilities.* (1) Headquarters' Labor Relations and other officials and Heads of Contracting Activities, consistent with their delegations of responsibility, shall assure management and operating contracts are consistent with the policies and requirements of paragraph (a), above.

(2) In discharging assigned responsibility, Heads of Contracting Activities shall:

(i) Periodically review workers' compensation insurance programs of management and operating contractors in the light of applicable workers' compensation statutes to assure conformance with the requirements of paragraph (a), above;

(ii) Evaluate the adequacy of coverage of "self-insured" workers' compensation programs;

(iii) Provide arrangements for the administration of any existing "employees' benefit plans until such plans" are terminated; and

(iv) Submit to the Office of Industrial Relations, Headquarters, all proposals for the modification of existing "employees' benefit plans."

(3) The Office of Industrial Relations, Headquarters, is responsible for approving management and operating contractor "employees' benefit plans."

970.2272 Conduct of employees and consultants of DOE management and operating contractors.

(a) *Scope of subsection.* This subsection establishes the policies for maintaining satisfactory standards of conduct on the part of employees and consultants employed on DOE contract work by its management and operating contractors. Contracts with colleges and universities, which have adopted conflict-of-interest policies consistent with ACE-AAUP standards and do not involve the operation of Government-owned facilities on Government-owned or Government-leased land, are governed by the "Policy of the Federal Council for Science and Technology Relating to Conflicts of Interest by Staff Members of Colleges and Universities" (adopted March 29, 1966), and are not subject to this subsection.

(b) *Applicability.* (1) These policies are applicable to DOE management and operating contractors to the extent that their contracts with DOE contain provisions making this subsection applicable; or instructions have been issued under appropriate provisions of their contracts with DOE directing compliance with this subpart.

(2) The contract clause contained in 970.5204-12 requiring the contractor to establish such procedures as are necessary to effectively implement the provisions of this subsection, subject to the approval of the Contracting Officer, shall be included in all new DOE management and operating contracts.

(3) The contract clause contained in 970.5204-27(a) concerning necessary approvals to be obtained by contractor employees before performing consultant or similar services for another DOE contractor shall be included in.

(i) All new DOE management and operating contracts except those identified in paragraph (b)(4) of this section; and

(ii) Major modifications (involving change in scope or other significant substantive changes) or extensions of existing contracts within the foregoing category.

(4) The contract clause contained in 970.5204-27(b) concerning necessary approvals to be obtained by contractor employees before performing consultant or similar services for another DOE contractor, or in the energy field for another organization, shall be included in:

(i) All new DOE management and operating contracts for research or operations of DOE program work where a substantial portion of the land or buildings used for such research or in such operations is owned or controlled by the Government; and

(ii) Major modifications (involving change in scope or other significant substantive changes) or extensions of existing contracts within the foregoing category.

(5) Exceptions to the requirements of paragraphs (b)(2), (3), and (4) will be permitted only with the approval of the Procurement Executive.

(c) *Gratuities.* A management and operating contractor or its employees or consultants shall not, under circumstances which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their duties, accept any gratuity or special favor from individuals or organizations with whom the contractor is doing business, or proposing to do business.

in accomplishing the work under the contract. Reference should be made to the provisions of 41 U.S.C. 51-54.

(d) *Use of privileged information.* Employees and consultants of a management and operating contractor shall not use for personal gain or make other improper use of privileged information which is acquired in connection with their employment on contract work. In this connection, the term "Privileged information" includes but is not limited to, unpublished information relating to technological and scientific developments; medical, personnel, or security records of individuals; anticipated materials' requirements or pricing action; possible new sites for DOE program operations; and knowledge of selections of contractors or subcontractors in advance of official announcement.

(e) *Outside employment of contractor employees.* Employees of a management and operating contractor are entitled to the same rights and privileges with respect to outside employment as other citizens. Therefore, there is no general prohibition against employees having outside employment. However, no employee of a contractor performing work on a full-time basis under a DOE management and operating contract may engage in employment outside official hours of duty or while on leave if such employment will:

(1) In any manner interfere with the proper and effective performance of the duties of the position;

(2) Appear to create a conflict-of-interest situation, or

(3) Appear to subject DOE or the contractor to public criticism or embarrassment.

(f) *Information statement concerning consultant or other employment service.* If a consultant or other outside employment service of the employee involves the use of information in the area of the employee's contract employment, the contractor will be responsible for requiring that the employee file with the contractor, an information statement containing such information concerning the outside employment as the contractor may prescribe. As a minimum, the information statement shall include a description of any patent agreements that may be involved and the following acknowledgement:

> I acknowledge that I have read and am familiar with the published policy of the DOE contained in:
>
> (a) Subpart 970.2272 "Conduct of employees and consultants of DOE management and operating contractors;" and
>
> (b) DOE publication entitled, "Reporting Results of Scientific and Technical Work Funded by DOE," which states in part that significant new results produced in DOE-funded scientific and technical work agree not to withhold or delay reporting information acquired through my employment with —— in favor of —— with whom I have made or am contemplating making a consulting agreement. I have also read and am familiar with the requirements of my employer's contract with DOE relating to patents. To the best of my knowledge or belief, the activities to be performed under this consulting agreement will not conflict with the policy set forth in 970.5204-27, the patent provisions of my employer's contract with DOE, or with the responsibility of my employer to report fully and promptly to DOE all significant research and development information. If in the course of my activities under this consulting agreement, it appears that such a conflict may arise, I will promptly notify and consult with my primary employer —— concerning such possible conflict.

(g) *Incompatibility between regular duties and private interests.* Employees and consultants of a management and operating contractor shall not be permitted to make or influence any decisions on behalf of the contractor which directly or indirectly affect the interest of the Government, if the employee's or consultant's personal concern in the matter may be incompatible with the interest of the Government. For example: (1) An employee or consultant of a contractor will not negotiate, or influence the award of, a subcontract with a company in which the individual has an employment relationship or significant financial interest; and (2) an employee or consultant of a contractor will not be assigned the preparation of an evaluation for DOE or for any DOE contractor of some technical aspect of the work of another organization with which the individual has an employment relationship, or significant financial interest, or which is a competitor of an organization (other than the contractor

best copy available

pages tightly bound

who is the individual's regular employer) in which the individual has an employment relationship or significant financial interest. The contractor shall be responsible for informing employees and consultants that they are expected to disclose any incompatibilities between duties performed for the contractor and their private interests and to refer undecided questions to the contractor.

[49 FR 12063, Mar. 23, 1984; 49 FR 38952, Oct. 2, 1984]

970.2273 Administrative controls and criteria for application of the Davis-Bacon Act in operational or maintenance activities.

(a) Particular work items falling within one or more of the following criteria normally will be classified as noncovered by the Davis-Bacon Act.

(1) Individual work items estimated to cost $2,000 or less. The total dollar amount of the operating contract is not a factor to be considered and bears no relation to individual work items classified as construction, alteration and/or repair, including painting and decorating. However, no item of work, the cost of which is estimated to be in excess of $2,000, shall be artificially divided into portions less than $2,000 for the purpose of avoiding the application of the Act.

(2) Work and services that are a part of operational and maintenance activities or which, being very closely and directly involved therewith, are more in the nature of operational activities than construction, alteration, and/or repair work. This includes work and services which would involve a material risk to continuity of operations, to life or property, or to DOE operating requirements, if performed by persons other than the operating contractor's regular production and maintenance forces. However, any decision that contracts or work items are noncovered for these reasons must be made by the Head of the Contracting Activity and the authority to make such a decision cannot be redelegated.

(3) Assembly, modification, setup, installation, replacement, removal, rearrangement, connection, testing, adjustment, and calibration of machinery and equipment. It should be noted, however, that these activities are covered if they are part of or would be a logical part of the construction of a facility, or if construction type work, other than defined as "incidental" in 922.470(e) is involved.

(4) Experimental development of equipment, processes, or devices including assembly, fitting, installation, testing, reworking, and disassembly. This refers to equipment, processes and devices which are assembled for the purpose of conducting a test or experiment. The design may be only conceptual in character, and professional personnel responsible for the experiment participate in the assembly. Specifically excluded from the category of experimental development are buildings and building utility services—as distinguished from temporary connections thereto. Also specifically excluded from this category is equipment to be used for continuous testing, e.g., a machine to be continuously used for testing the tensile strength of structural members. (See 922.403-7302(g) and 920.2273(c)).

(5) Experimental work in connection with peaceful uses of nuclear energy. This refers to equipment, processes and devices which are assembled and/or set in place and interconnected for the purpose of conducting a test or experiment. The nature of the test or experiment is such that professional personnel responsible for the test or experiment and/or data to be derived therefrom necessarily must participate in the assembly and interconnections. Specifically excluded from experimental work are buildings, building utility services, structural changes, drilling, tunneling, excavation, and back-filling work which can be performed according to customary drawings and specifications, and utility services of modifications to utility services—as distinguished from temporary connections thereto. Work in this category may be performed in mines or in other locations specifically constructed for tests or experiments. (See 922.403-7302(g) and 920.2273(c).)

(6) Emergency work to combat the effects of fire, flood, earthquake, equipment failure, accident or other casualties, and to restart the operational activity following the casualty.

work which is not directly related to restarting the activity or which involves rebuilding or replacement of structure or structural components or equipment is excluded from this category. (See 922.403-7302(g) and 920.2273(c).)

(7) Decontamination. including washing, scrubbing, and scraping to remove contamination; removal of contaminated soil or other material; and painting or other resurfacing, provided that such painting or resurfacing is an intergral part of the decontamination activity and performed by the employees of the contractors performing the decontamination.

(8) Burial of contaminated soil waste or contained liquid; however, initial preparatory work readying the burial ground for use (for exmple, any grading or excavating that is a part of initial site preparation, fencing, drilling wells for continued monitoring of contamination, construction of guard or other office space) is covered. Likewise, work subsequent to burial which involves the placement of concrete or other like activity is covered.

(b) The classification of a contract as a contract for operational or maintenance activities does not necessarily mean that all work and activities at the contract location are classifiable as outside Davis-Bacon Act coverage, since it may be necessary to separate out work which should be classified as covered. Therefore, Heads of Contracting Activities shall establish and maintain controls for the careful scrutiny of proposed work assignments under such a contract to assure that:

(1) Contractors whose contracts do not contemplate the performance of covered work with the contractor's own forces are neither asked nor authorized to perform work within the scope of the Davis-Bacon Act. If the actual work assignments do involve covered work, the contract should be modified to include applicable provisions of the Davis-Bacon Act.

(2) Where covered work is performed by a contractor whose contract contains provisions required by the Davis-Bacon Act, such work is performed as required by law and the contract. After such contractor has been informed, as provided in paragraph (b)(3) of this section, that certain work is covered work, the Head of the Contracting Activity's responsibility to assure compliance is the same as it would be if the work were being performed under a separate construction contract.

(3) Controls provided for above include consideration by the Head of the Contracting Activity and the contractor, before work is begun or contracted out, of the relation of the Davis-Bacon Act to (i) the annual programming of work, (ii) the contractor's work orders, and (iii) work contracted out in excess of $2,000. The Head of the Contracting Activity may, if he concludes that it is consistent with DOE's responsibilities as described in this section, prescribe from time to time classes of work as to which applicability or nonapplicability of the Davis-Bacon Act is clear, for which he will require no further DOE determination on coverage in advance of the work. For all work, controls to be established by the Head of the Contractng Activity should provide for notification to the contractor before work is begun as to whether such work is covered.

The Head of the Contracting Activity is responsible for submitting to the Wage and Hours Division, Employment Standards Administration, Department of Labor, Washington, D.C. 20210, all DOE requests for project area or installation wage determinations, or individual determinations, or extensions or modification thereto. Requests for such determinations shall be made on Standard Form 308, at least 30 calendar days before they are required for use in advertising for bids or requests for proposals.

(c) *Experimental installations.* Within DOE programs, a variety of experiments are conducted involving materials, fuels, coolants, processes equipment. Certain types of situations where tests and experiments have sometimes presented coverage questions are described below.

(1) *Set-ups of device and/or processes.* The proving out of investigative findings and theories of a scientific and technical nature may require the set-up of various devices and/or processes at an early, pre-prototype stage of development. These may range

from laboratory bench size to much larger set-ups. As a rule, these set-ups are made within established facilities (normally laboratories); required utility connections are made to services provided as a part of the basic facilities; and the activity as a whole falls within the functional purpose of the facility. Such set-ups are generally not covered. However, the erection of structures which are public works is covered if construction type work, other than an "incidental amount" as defined in 922.470(e) is involved. Preparatory work for the set-up requiring structural changes or modifications of basic utility services—as distinguished from connections thereto—is covered. Following are illustrations of noncovered set-ups of devices and/or processes:

(i) Assembly of piping and equipment within existing "hot cell" facilities for proving out a conceptual design of a chemical processing unit;

(ii) Assembly of equipment, including adaptation and modification thereof, in existing "hot cell" facilities to prove out a conceptual design for remotely controlled machining equipment;

(iii) Assembly of the first graphite pile in a stadium at Stagg Field in Chicago;

(iv) Assemby of materials and equipment for particular aspects of the direct current thermonuclear experiments to explore feasibility and to study other ramifications of the concept of high energy injection and to collect data thereon.

(2) *Loops.* Many experiments are carried on in equipment assemblies called loops in which liquids or gases are circulated under monitored and controlled conditions. For purposes of determining Davis-Bacon coverage, loops may be classed as loop facilities or as loop set-ups. Both of these classes of loops can include in-reactor loops and out-of-reactor loops. In differentiating between clearly indentified loop set-ups and loop facilities, an area exists in which there have been some questions of coverage, such as certain loops at the Material Test Reactor and at Engineering Test Reactor and the Idaho National Engineering Laboratory site. Upon clarification of this area, further illustrations will be added. In the meantime, the differentiation between loop set-ups and loop facilities must be made on a case-by-case basis, taking into account the total criteria set forth in this subpart.

(i) *Loop set-ups.* The assembly, erection, modification, and disassembly of a loop set-up is noncovered. A noncontroversial example of a loop set-up is one which is assembled in a laboratory, e.g., Oak Ridge National Laboratory, Argonne National Laboratory, or Lawrence Livermore National Laboratory, for a particular test and thereafter disassembled. However, preparatory work for a loop set-up requiring structural changes or modifications of basic utility services—as distinguished from connections thereto—is covered, as are material and equipment that are installed for a loop set-up which is a permanent part of the facility or which is use for a succession of experimental programs.

(ii) *Loop facilities.* A loop facility differs from a loop set-up in that it is of a more permanent character. It is usually, but not always, of greater size. It normally involves the building or modification of a structure. Sometimes it is installed as a part of construction of the facility. It may be designed for use in a succession of experimental programs over a longer period of time. Examples of loop facilities are the in-reactor "K" loops at Hanford and the large Aircraft Nuclear Propulsion loop at the Idaho National Engineering Laboratory site. The on-site assembly and erection of such loop facilities are covered. However, once a loop facility is completed and becomes operational, the criteria set forth above for operational and maintenance activities apply.

(3) *Reactor component experiments.* Other experiments are carried on by insertion of experimental components within reactor systems without the use of a loop assembly. An example of reactor facilities erected for such experimental purposes are the special power excursion test reactors (SPETRs) at the National Reactor Test Site which are designed for studying reactor behavior and performance characteristics of certain reactor components. Such a facility may

consist of a reactor vessel, pressurizing tank, coolant loops, pumps, heat exchangers, and other auxiliary equipment as needed. The facility also may include sufficient shielding to permit work on the reactor to proceed following a short period of power interruption, and buildings as needed to house the reactor and its auxiliary equipment. The erection and on-site assembly of such a reactor facility is covered, but the components whose characteristics are under study are excluded from coverage. To illustrate, one of the SPETRs planned for studies of nuclear reactor safety is designed to accommodate various internal fuel and control assemblies. The internal structure of the pressure vessel is designed so that cores of different shapes and sizes may be placed in the vessel for investigation, or the entire internal structure may be easily removed and replaced by a structure which will accept a different core design. Similarly, the control rod assembly is arranged to provide for flexibility in the removal of instrument leads and experimental assemblies from within the core.

(4) *Tests or experiments in peaceful uses of nuclear energy.* These tests or experiments are varied in nature and some are only in a planning stage. They consist of one or more nuclear or nonnuclear detonations for the purposes of acquiring data. The data can include seismic effects, radiation effects, amount of heat generated, amount of material moved and so forth. Some of these tests are conducted in existing mines, while others are conducted in facilities specifically constructed for the tests or experiments. In general, all work which can be performed in accordance with customary drawings and specifications, as well as other work in connection with preparation of facilities is treated as covered work. Such work includes tunneling, drilling, excavation and back-filling, erection of buildings or other structures, and installation of utilities. The installation of the nonnuclear material or nuclear device to be detonated, and the instrumentation and connection between such material or device and the instrumentation are treated as noncovered work.

(5) *Tests or experiments in military uses of nuclear energy.* As in 970.2273(c)(4), these tests or experiments can be varied in nature. However, under this category it is intended to include only detonation of nonnuclear material or nuclear devices. The material or devices can be detonated either underground, at ground level, or above the ground. These tests or experiments have been conducted in, on, or in connection with facilities specifically constructed for such tests or experiments. As in tests or experiments in peaceful uses of nuclear energy, all work which can be performed in accord with customary drawings and specifications, as well as other work in connection with preparation of facilities are treated as covered work. Such work includes building towers or similar structures, tunneling, drilling, excavation and backfilling, erection of buildings or other structures, and installation of utilities. The installation of the nonnuclear material or nuclear devices and instrumentation are treated as noncovered work.

(d) *Construction site contiguous to an established manufacturing facility.* As DOE-owned property sometimes enbraces several thousand acres of real estate, a number of separate facilities may be located in areas contiguous to each other on the same property. These facilities may be built over a period of years, and established manufacturing activities may be regularly carried on at one site at the same time that construction of another facility is underway at another site. On occasion, the regular manufacturing activities of the operating contractor at the first site may include the manufacture, assembly, and reconditioning of components and equipment which in other industries would normally be done in established conmmercial plants. While the manufacture of components and equipment in the manufacturing plant is noncovered, the installation of any such manufactured items on a construction job is covered.

[49 FR 12063, Mar. 28, 1984; 49 FR 38952, Oct. 2, 1984]

Subpart 970.23—Environmental, Conservation, and Occupational Safety Programs

970.2303 Hazardous materials identification and material safety.

970.2303-1 General.

(a) The Department of Energy regulates the nuclear safety of its major facilities under its own statutory authority derived from the Atomic Energy Act and other legislation. The Department also regulates, under certain specific conditions, the use by its contractors of radioactive materials and ionizing radiation producing machines.

(b) The inclusion of environmental, safety and health clauses in DOE contracts shall be made by the contracting officer in consultation with appropriate environmental, safety and health program management personnel.

970.2303-2 Clauses.

(a) When work under management and operating contracts and subcontracts thereunder is to be performed at a facility where DOE will exercise its statutory authority to enforce occupational safety and health standards applicable to the working conditions of the contractor and subcontractor employees at such facility, the clause at 970.5204-2 shall be used in such contract or subcontract and made applicable to the work if conditions (a)(1) through (3), are satisfied:

(1) DOE work is segregated from the contractor's or subcontractor's other work;

(2) The operation is of sufficient size to support its own safety and health services; and

(3) The facility is government-owned, or leased by or for the account of the government.

(b) The clause set forth in 952.223-72 shall be included in those contracts or subcontracts for, and be made applicable to, work to be performed at a facility where DOE does not elect to assert its statutory authority to enforce occupational safety and health standards applicable to the working conditions of contractor and subcontractor employees, but does need to enforce radiological safety and health standards pursuant to provisions of the contract or subcontract rather than by reliance upon Nuclear Regulatory Commission licensing requirements (including agreements with states under section 274 of the Atomic Energy Act).

(c) The clause set forth at 970.5204-26 shall be included in all contracts and subcontracts for, and be made applicable to, work to be performed at or involving the construction, startup, operation, and decommissioning of DOE-owned nuclear facilities deemed to be exempt from Nuclear Regulatory Commission licensing requirements. Any deviation in substance affecting the meaning, intent, or basic principles of this clause must be referred to the Procurement Executive, for approval.

(d) The clause at 970.5204-41 shall be included in all contracts containing the DOE standard clause entitled "Safety and Health" at 970.5204-2 or "Radiation Protection and Nuclear Criticality" at 952.223-72 or Nuclear Facility Safety Applicability at 970.5204-26.

[49 FR 12063, Mar. 28, 1984; 49 FR 38952, Oct. 2, 1984]

Subpart 970.25—[Reserved]

Subpart 970.27—Patents, Data, and Copyrights

970.2701 General.

(a) The provisions of 41 CFR 9-9.1 remain in effect for the management and operation of Government-owned research or production facilities.

(b) A management and operating contractor's obligations for protection of information and data received from DOE and other contractors or subcontractors, and for the contractor's private use of contract data first produced in the performance of the contract, are set forth in paragraph (b)(2) of each Rights in Technical Data clause in 952.227. This subparagraph provides that the contractor may, subject to patent, security, or other provisions of the contract, use for its private purposes, contract data it first produces in the performance of the contract, provided that the contractor has met its data requirements (e.g., delivery of data in the form of progress or status reports specified to be delivered) as of the date of private use of such data. It is not necessary that a "Final Report" be submitted in order to privately use data if all required progress and interim reports and other technical data than due have been delivered. Paragraph (b)(2) further provides that technical or other data received by the contractor in the performance of the contract must be held in confidence by the contractor in accordance with restrictions accompanying the data.

(c) Contractors should be aware that technical information which is reported to DOE by DOE contractors may be disseminated by DOE to others, subject to the restrictions included in the "Rights to Technical Data" clause.

(d) Employees of contractors operating DOE facilities may not be used to assist in the preparation of a proposal or bid for the performance of private commercial services similar or related to those being performed under the DOE contract unless such employee has been separated, with DOE approval, from performance of work under the DOE contract for such period as the Head of the Contracting Activity or designee shall direct consistent with the purpose of this section.

(e) Contractors operating DOE facilities and performing services as a part of their contract work for other Government agencies or private organizations should not be permitted to utilize information which is furnished by such customers for their own private activities unless it is generally available to others, or unless the customer authorizes such use.

970.2702 Procedures.

(a) *General.* It is essential that DOE maintain continuity in its programs which are implemented by contracts for the operation of Government-owned facilities. Contract data first produced or specifically used in the performance of such contracts must be considered as integral to and remaining with the facility or plant after termination of such contracts and thus available to DOE and its future contractors for the continued use of the facility or plant. However, it is recognized that these contracts by their nature cannot always be subject to one set of prescribed contract provisions which will always apply. Accordingly, the Rights in Technical Data-Facility clause set forth in 952.227-78 is to be used as a basic or minimal clause which may be modified or expanded with the concurrence of patent counsel to meet particular contract situations.

Whenever a contract has as a purpose the operation of a Government-owned research or production facility, the clause set forth at 952.227-78 shall normally be included in the contract. Inasmuch as this clause secures to the Government ownership, access to, and, if requested, delivery of all technical data first produced in the performance of the contract and access to and delivery of technical data which are specifically used in the performance of the contract, there is no need to include the Additional Technical Data Requirements Clause of 952.227-73.

(b) *Subcontracting.* Unless otherwise directed by the contracting officer, the contractor shall be required to follow the policy and procedures of 927.402-1, 927.402-2, and 927.402-3 and shall employ the provisions of the Additional Technical Data Requirements Clause of 952.227-73 and the Rights in Technical Data (Long Form) clause of 952.227-75, where appropriate, except in subcontracts for the design of special production plants or facilities or specially designed equipment for facilities or plants, in which instances contractors shall include the provisions of the Rights in Technical Data—Facility Clause of 952.227-78.

(c) *Optional clause—Limited rights in proprietary data.* In contracts where it is determined that delivery of proprietary data is necessary with limited rights in the Government, the Rights in Technical Data clause of this section shall be supplemented by the additional paragraph (e), set forth in 952.227-79. Paragraph (e) provides that technical data may be specified in the contract as being excluded from the delivery requirements thereof. Alternatively, paragraph (e) may be limited or made applicable to only those classes of proprietary data determined as being necessary for delivery with limited rights. In addition, when furnishing proprietary data with the limited rights legend, paragraphs (a), (b) and (c) thereunder may be modified as follows. When proprietary data is to be furnished only for evaluation, paragraph (a) of the limited rights legend shall be used, and paragraphs (b) and (c), if otherwise inapplicable, may be deleted. When there is a programmatic requirement that proprietary data be disclosed to other DOE contractors only for information or use in connection with work performed under their contracts, paragraph (b) of the limited rights legend shall be used, and paragraphs (a) and (c) may be deleted if otherwise inapplicable. In either of the foregoing examples, the contractor may, if it can show the possibility of a conflict of interest because of disclosure of such data to certain contractors or evaluators, exclude contractors or evaluators from paragraph (a) or (b). If the data is required solely for emergency repair or overhaul, paragraph (c) of the limited rights legend shall be retained, and paragraphs (a) and (b) may, unless otherwise applicable, be deleted. In the event that it is determined that all of the paragraphs (a), (b) and (c) of the limited rights legend are to be deleted, the word "none" shall be inserted in the legend after the colon (:).

(d) For contracts involving access to certain categories of DOE-owned restricted data, as set forth in 10 CFR Part 725, see 927.402-1(h).

Subpart 970.28—Bonds and Insurance

970.2870 Indemnification.

(a) DOE policies provide for indemnification of DOE management and operating contractors against public liability for a nuclear incident arising out of or in connection with operation of production or utilization facilities, and work which entails the risk of public liability for a substantial nuclear incident.

(b) Details of these policies are discussed at 950.70 Indemnification of DOE contractors.

(c) Section 170d of the Atomic Energy Act of 1954, as amended, authorizes DOE "to enter into agreements of indemnification with its management and operating contractors for the construction or operation of production or utilization facilities or other activities under contracts for the benefit of the United States involving activities under the risk of public liability for a substantial nuclear incident."

(d) Heads of Contracting Activities are authorized to negotiate statutory indemnity agreements with management and operating contractors following the procedures at 950.70. They may enter into a statutory indemnity agreement whenever it has been determined that a contractor that is engaged in activities involving the risk of public liability for a substantial nuclear incident.

(e) The contract clause contained in 970.5204-6 shall be incorporated in management and operating contracts in which a statutory indemnity agreements is to be included upon a determination that the contractor is under risk of public liability for the occurrence of a substantial nuclear incident in the course of performance of the contract work. The contract clause contained in 970.5204-7 shall be incorporated in management and operating contracts in which a statutory indemnity agreement is to be included upon a determination that the contractor is under risk of public liability for a substantial nuclear incident caused by a product delivered to or for DOE under the contract where such product is expected to be used in connection with a facility or device not covered by a statutory indemnity agreement.

(f) A DOE contractor with whom a statutory indemnity agreement has been executed in the form contained in 970.5204-6 may include in any of its subcontracts and purchase orders a representation that the work under the prime contract is covered by a statutory indemnity agreement with the DOE, and that this indemnity covers all persons who may be liable for public liability for any nuclear incident arising out of or in connection with the activity under the prime contract. A suggested form of "representation" that may be provided to the contractor follows:

STATUTORY INDEMNITY

The contractor represents that there is included in its prime contract with DOE an indemnity agreement, entered into by DOE under the authority of section 170 of the Atomic Energy Act of 1954, as amended by Pub. L. 95-256 (the "Price-Anderson Act"), a copy of which may be obtained from the contractor (or is attached hereto); that, under said agreement, DOE has agreed to indemnify the contractor and other persons indemnified, including the subcontractor, against claims for public liability (as defined in said Act) arising out of or in connection with the contractual activity; that the indemnity applies to covered nuclear incidents which (1) take place at a "contract location" (which term, as defined in the indemnity agreement, does not include the location of the subcontractor's plant and facilities); or (2) arise out of or in the course of transportation of source, special nuclear or by-product material to or from a "contract location;" or (3) involve items produced or delivered under the prime contract. The obligation of DOE to indemnify is subject to the conditions stated in the indemnity agreement.

(g) DOE shall not approve the inclusion, in the subcontracts and purchase orders of an indemnified management and operating contractor, of any provision whereby the management and operating contractor indemnifies the subcontractor or supplier against public liability for a nuclear incident because any such liability will be covered by the statutory indemnity agreement of the prime contractor.

(h) Management and operating contractors with whom statutory indemnity agreements under the authority of section 170d of the Atomic Energy Act of 1954, as amended, are executed will not normally be required or permitted to furnish financial protection by purchase of insurance to cover public liability for nuclear incidents, except (1) that DOE contractors now covered by insurance against such liability, with the approval of the DOE, may continue to carry such insurance; and (2) with the approval of the Office of Industrial Relations, contractors engaged in the operation of DOE facilities may be required or permitted to furnish financial protection in an amount not to exceed $1 million.

Subpart 970.29—Taxes

970.2901 Exemptions from Federal excise taxes.

(a) The exemption respecting taxes on communication services or facilities has been held to extend to such services when furnished to DOE management and operating contractors who pay for such services or facilities from advances made to them by DOE under their contracts.

(b) Where it is considered that a request for an additional exemption in the performance of a management and operating contract would be justified, a recommendation that such a request be made should be forwarded to the Controller.

(c) Where tax exemption certificates are required in connection with the foregoing taxes, the Head of the Contracting Activity will supply standard Government forms (SF 1094, U.S. Tax Exemption Certificate) on request.

970.2902 State and local taxes.

It is DOE policy to secure those immunities or exemptions from state and local taxes to which it is entitled under the Federal Constitution or state laws. In carrying out this policy, Heads of Contracting Activities shall:

(a) Take all necessary steps to preclude payment of any taxes for which any of the foregoing immunities or exemptions are available. Advice of Counsel should be sought as to the availability of such immunities or exemptions;

(b) Acquire directly and furnish to contractors as Government furnished property, equipment, material, or services when, in the opinion of the Head of the Contracting Activity:

(1) Such direct acquisition will result in substantial savings to the Government, taking into consideration any additional administrative costs;

(2) Such direct acquisition will not have a substantial adverse effect on the relationship between DOE and its contractor; and

(3) Such direct acquisition will not have a substantial adverse effect on the DOE program or schedules.

970.2903 Contract clauses.

Contracting officers shall include an appropriate clause in management and operating contracts.

[49 FR 12063, Mar. 28, 1984, as amended at 53 FR 24231, June 27, 1988]

Subpart 970.30—Cost Accounting Standards

970.3001 General.

970.3001-1 Applicability.

The provisions of FAR Part 30 shall be followed for management and operating contracts.

970.3001-2 Limitations.

Cost of money as an element of the cost of facilities capital (CAS 414) and as an element of the cost of capital assets under construction (CAS 417) is not recognized as an allowable cost under contracts subject to 970 (See 970.3102-10).

Subpart 970.31—Contract Costs Principles and Procedures

970.3100 Scope and applicability of subpart.

The cost principles, procedures and general policy for the determination of reimbursable costs applicable to the administration of management and operating contracts are set for in this subpart. The terms "reimbursement" and "reimbursable" are used interchangeably in relation to "allowable costs" as a matter of editorial convenience. No "reimbursement" is actually involved in those situations where the cost-type contractor makes payments for "allowable cost" from Government funds advanced to him by the DOE.

970.3100-1 Definitions.

"Off-site work" is contract required work (under a contract covered by FAR Subpart 17.6) performed in contractor-owned facilities, such as a central or branch office.

"On-site work" (under a contract covered by FAR Subpart 17.6) is work performed at the Government-site.

"Direct costs" of a management and operating contract are defined as follows:

(a) With respect to on-site work, "direct costs" technically include all performance costs; that is, such costs are identified specifically for, or account of, the contract. However, in some circumstances it may be desirable or necessary because of the requirements of the contract to distinguish between direct and indirect types of costs. "Direct costs," when the foregoing circumstances apply, are those which are identified as having been incurred specifically for, or on account of a designated cost objective, such as a particular product (or groups of similar products), work order, job, project, program or contract. Materials, labors or expenses which relate specifically and solely to the manufacture of a particular product or to the performance of a distinct job or work are broad examples of direct costs. Direct costs are not limited to items incorporated in an end product.

(b) With respect to "off-site" work, "direct costs" are as defined in FAR 31.202 and discussed in other sections of this subpart.

"Indirect costs" of a management and operating contract are defined as follows:

(a) With respect to "on-site" work, when it is desirable or necessary to distinguish them from direct costs, "indirect costs" are those items of material, labor, and expenses not directly identified with a single final cost accumulation point, but identified with applicability to two or more objectives or with at least one intermediate cost objective.

(b) With respect to "off-site" work, "indirect cost" are as defined in FAR 31.203 and discussed in other sections of this subpart.

970.3100-2 Responsibilities.

(a) The Procurement Executive is responsible for developing and revising the policy and procedures for the determination of allowable costs reimbursable under a management and operating contract, and for seeing that they are properly coordinated with other Headquarters' offices having joint interests.

(b) The Head of the Contracting Activity is responsible for following the policy, principles and standards set forth herein in establishing the compensation provisions of contracts and subcontracts and for submission of deviations for Headquarters consideration.

970.3100-3 Deviation.

Deviations from the policy and principles set forth in this subpart shall not be made unless such action is authorized by the Procurement Executive, on the basis of a written justification stating clearly the special circumstances involved. Where appropriate, any approved deviation shall be reflected in the compensation provisions of the contract.

970.3101 General policy.

The cost policies of the DOE regarding management and operating contracting are as discussed in this section:

970.3101-1 Actual cost basis.

(a) DOE shall reimburse its contractors for costs incurred in the performance of a management and operating contract in accordance with its terms and the provisions of this subpart. Such costs are those allowable costs provided for in the contract to the extent that they are necessary or incident, and either directly attributable or equitably allocable to the work under the contract. This broad expression of the DOE's cost-reimbursement policy is further developed and elaborated upon throughout this subpart.

(b) DOE uses retrospective or after-the-fact determination, usually called the actual cost basis, to establish the amount reimbursable. This general policy precludes the use of predetermined fixed percentage rates except for provisional payments.

(c) When a fixed compensation for any otherwise allowable cost is separately negotiated, the items of such costs covered by the fixed amount shall be identified with maximum clarity and set forth in an appropriate appendices to the contract as an amount otherwise excludable from other reimbursable costs (this is done in order to distinguish between those allowable costs subject to reimbursement and those costs which are covered by the negotiated fixed amount).

970.3101-2 Direct and indirect costs.

(a) Direct costs identified specifically with a management and operating contract are direct cost of performing that contract and are to be charged directly thereto. All costs specifically identified with other final cost objectives of the management and operating contractor are direct cost of those cost objectives and are not to be charged to the contract directly or indirectly. For reasons of practicality, any direct cost of minor dollar amount may be treated as an indirect cost if the accounting treatment—

(1) Is consistently applied; and

(2) Produces substantially the same results as treating the cost as a direct cost.

(b) Indirect cost are not subject to treatment as a direct cost and thus directly chargeable to a contract. After direct costs have been determined and charged directly to the contract or other work, indirect costs are those remaining to be allocated from an appropriate indirect cost accumulation account. The following principles and procedures shall apply to indirect costs to the extent that they are incurred under management and operating contracts.

(1) Indirect costs to the extent required to be or otherwise incurred in the accounting system of the operating contractor shall be accumulated by logical cost groupings with due consideration of the reasons for incurring such costs. Each grouping should be determined so as to permit distribution of the grouping on the basis of the benefits accruing to the cost objectives to which it is to be allocated. Generally, overhead and general and administrative (G&A) expenses are separately grouped. Similarly, the particular case may require subdivision of these groupings; e.g., building occupancy costs might be separable from those of personnel administration within a specific overhead group such as manufactoring overhead. This necessitates selecting a distribution base common to all cost objectives to which the grouping is to be allocated. The

base should be selected so as to permit allocation of the grouping on the basis of the benefits accruing to the cost objectives. The number and composition of cost groupings should be governed by practical considerations and should not unduly complicate the allocation.

(2) Once an appropriate base for distributing indirect costs has been accepted, it shall not be fragmented by removing individual elements. For example, when a cost input base is used for the distribution of G&A costs, all items that would properly be part of the costs input base, whether allowable or unallowable, shall be included in the base and bear their pro rata share or G&A costs.

(3) The method of allocating indirect costs shall be in accordance with generally accepted accounting principles which are consistently applied.

(4) A base period for allocating indirect costs is the cost accounting period during which such costs are incurred and accumulated for distribution to work performed in that period.

970.3101-3 General basis for reimbursement of costs.

(a) The total reimbursable cost of a DOE management and operating contract is the sum of the allowable direct costs necessary or incident to the performance of the contract, plus any properly allocable portion of allowable indirect costs, (including corporate or home office G&A expense, or branch office indirect expenses), if any, less applicable income and other credits. In determining allowability and reimbursability of costs, the following shall be considered:

(1) Reasonableness, including the exercise of prudent business judgment;

(2) Allocability of a cost to management and operating contract. A cost is allocable if it is assignable or chargeable for work and performance of the contract in accordance with the relative benefits received or other equitable relationship;

(3) Application of generally accepted accounting principles and practices appropriate to identifying and measuring costs of performing the contract in accordance with this subpart;

(4) All exclusions of and limitations of types and amounts of items of cost set forth in the contract;

(5) Approvals by the contracting officer required under the contract terms; and

(6) Cost accounting standards if applicable.

970.3101-4 Cost determination based on audit.

The amount reimbursable under management and operating contracts shall be determined in accordance with the principles set forth in this subpart and in accordance with the terms of the respective contract on the basis of audit. In the event that the contractual terms differ, or are inconsistent with (see 970.3100-3 for approval of deviations) the principles stated herein, the contractual terms control. It is expected however, contractual terms to be based on the principles therein. The audit may be performed directly by DOE (or by the cognizant Federal agency pursuant to arrangements made by the DOE).

[49 FR 12063, Mar. 28, 1984, as amended at 53 FR 24231, June 27, 1988]

970.3101-5 Contractor's system of accounting.

(a) Careful DOE study of a management and operating contractor's usual accounting procedures shall be made prior to arriving at an understanding with the contractor as to the accounting system to be employed by the contractor during the period of contract performance.

(b) A contractor's customary accounting practices are usually accepted for management and operating contracts if they conform to generally accepted accounting principles, produce equitable results, are consistently applied, are not in conflict with the provisions of this subpart, are conducive to accurate costing of the contract work, and produce reports required by the DOE.

970.3101-6 Advance understandings on particular cost items.

(a) It is important that agreement between DOE and its management and operating contractors be reached in advance of the incurrence of costs in categories where reasonableness as to amounts or allocability to the management and operating contract are difficult to determine in order to avoid possible subsequent disallowance or dispute. Any such agreement should be incorporated in the contract. But the absence of such agreement on any element of cost will not, in itself, serve to make the element either allowable or unallowable. Examples of costs on which advance agreements may be particularly important are:

(1) Deferred maintenance costs;

(2) Precontract costs;

(3) Professional or technical consulting services;

(4) Reconversion costs;

(5) Research and development costs;

(6) Royalties;

(7) Selling and distribution costs;

(8) Unemployment insurance experience ratings;

(9) Employee compensation, including amounts of money or percentage of payment authorized to be expended annually for groups of employees for all types of wage and salary increases, travel, relocation expenses and other personnel costs.

(10) Lobbying costs;

(11) Public relations and advertising; and

(12) Travel and relocation costs as related to special or mass personnel movements and as related to travel via contractor-owned leased, or chartered aircraft.

(b) DOE generally utilizes two basic methods of achieving and recording understandings with contractors as to the allowability of employee compensation, travel, relocation, and other personnel costs: (1) Negotiation of a personnel appendix to the contract, which sets forth the policies, programs, and schedules which are accepted as the basis for determining the allowability of costs; or (2) reviewing and reaching agreements on established policies, programs, and schedules (and any changes thereto during the contract term) applicable to contractor's private operations which are acceptable for contract work and which will be consistently followed throughout the contractor's organization. A personnel appendix to the contract setting forth advance understandings covering compensation for personal services shall be utilized in management and operating contracts (as defined in FAR 17.601) when one or more of the following circumstances exist: when policies, programs, and schedules are established specifically for contract work; when the contractor's work is predominantly or exclusively made up of negotiated Government contract work; when contract work is so different from the organization's private work that existing established policies, programs, and schedules cannot reasonably be extended to and consistently applied on contract work; or, when established policies, programs, and schedules proposed for contract work are not sufficiently definitive to permit a clear advance mutual understanding of allowable costs and to provide a basis for audit. The Head of the Contracting Activity is authorized to select the alternative method of achieving and recording advance understanding that they find most appropriate, after considering the facts of the particular contract situation. As used in this paragraph:

(c) With regard to the costs at (a)(9) of this section:

(1) Compensation for personal services includes wages and salaries, bonuses and incentives, premium payments, pay for time not worked, and supplementary compensation and benefits, such as pension and retirement, group insurance, severance pay plans, and other forms of compensation covered by 970.3102-2.

(2) Employee travel costs include transportation expenses incurred while on official business, within the U.S. or outside the U.S. as necessary. Travel of executive officers is covered in 970.3102-17. Contractor travel policies must be acceptable to the Department, and result in reasonable cost necessary for contract performance. To avoid disputes and to clearly state the treatment that applies to travel cost, advance understandings should be reached with the management and operating contractor. They should be sufficiently definitive to evidence the contractor's responsibility to minimize costs consistent with contract performance. The allowability to certain

travel costs, such as air travel, are specifically limited by Department policy. For example, the added cost of first class air travel is prohibited as a reimbursable cost, except under stringent conditions, which must be justified in writing. Contractually enforceable understandings concerning the allowability and reimbursement of other potentially significant travel costs (such as the use of Government-furnished automobiles or Government-contract provided rental automobiles) should be reached with the contractor. A reasonable basis for such understandings is the Federal travel policy applicable to Government and directly paid contractor employees.

(3) Other personnel costs include:

(i) Morale, health, welfare, food service and dormitory costs covered in 970.3102-5;

(ii) Training and education costs covered in 970.5204-13 and 970.5204-14;

(iii) Relocation costs for relocating employees as discussed in 970.3102-16; and special or mass personnel movement covered in 970.3102-2(i).

[49 FR 12063, Mar. 28, 1984, as amended at 52 FR 1607, Jan. 14, 1987]

970.3102 Application of cost principles.

The incurred costs of performing management and operating contracts shall be reimbursed to the extent they are reasonable, allocable, and determined to be allowable under the provisions of this subpart and the terms of the contract. The DOE principles on allowability of selected items or classification of cost or situations expected to be associated with the performance of contract work as stated in this section.

970.3102-1 General and administrative expenses.

(a) For on-site work, the DOE considers that its fee allowance for management and operating contracts provides for the recognition of appropriate compensation for home or corporate office general and administrative expenses incurred in the general management of the contractor's business as a whole.

(b) The above policy is intended to preclude the payment of general and administrative expenses merely because they are incurred or accounted for at or by a contractor's home or corporate office and not the operating site. The DOE recognizes some benefit of such cost to the DOE program. The basis of recognition through fee allowance is associated with the difficulty of determining and assessing the dollar value of such expenses that might be applicable to or have benefit to a management and operating contract. Conventional allocation techniques; i.e., total operating costs, labor dollars or hours, etc., are generally not considered appropriate because they normally distribute such expenses over a base representative or contractor investment (in terms of its own resources, including labor, material, overhead, etc.). Contractor investments and home office contributions are minimal under DOE's operating and management contracts in as much as they are totally financed and supported by DOE advance payments under the letter-of-credit method and by DOE's provision of government-owned and project-exclusive facilities, property, and other needed resources.

(c) Notwithstanding the concept in (a) above, it is recognized that from time to time the fee amounts established for a management and operating contract, to meet the purpose cited in 970.1509-1 and consideration of the factors in 970.1509-4, may be considered insufficient to adquately recognize a contractor's general and administrative expenses incurred in general management and administration of the contractor's business as a whole and which appear to have a directly benefiting relationship to the DOE program. Such recognitions may be the basis of requesting fee amounts in excess of the limitations set forth in 970.1509-5 or alternatively, in any particular case, the contractor may be compensated on the basis of cost in accordance with 970.3101-1 if the Head of the Contracting Activity or other approving contract official authorizes or approves the procedure and a fair and reasonable amount can be agreed upon. Such amount shall normally be in addition to the applicable fee amounts.

(d) The DOE allows company general and administrative expenses under off-site architect-engineer, supply and research contracts with commercial contractors performing the work in their own facilities. Contractor's general and administrative expenses, may, however, be included for reimbursement under such DOE off-site architect-engineer, supply and research contracts, only to the extent that they are established, after careful examination, to be allowable in nature an properly allocable to the work. Work performed in a contractor's own facilities under a management and operating or construction contract may likewise be allowed to bear the properly allocable portion of allowable company general and administrative expense.

970.3102-2 Compensation for personal services.

(a) *General.* Compensation for personal services includes all remuneration paid currently or accrued, in whatever form and whether paid immediately or deferred, for services rendered by employees to the contractor during the period of contract performance (except as otherwise provided for severance pay costs in paragraph (b)(4)(i) of this section and for pension cost in paragraph (b)(1) of this section). It includes, but is not limited to, salaries; wages; directors' and executive committee members' fees; bonuses (including stock bonuses); incentive awards; employee stock options, stock appreciation rights, and stock ownership plans; employee insurance; fringe benefits; contributions to pension, annuity, and management employee incentive compensation plans; and allowances for off-site pay, incentive pay, location allowances, hardship pay, severance pay, and cost of living differential.

(b) *Allowability.* Reimbursable costs for compensation for personal services are to be set forth in a personnel appendix in the contract as discussed at 970.3101-6. This personnel appendix shall be negotiated using the principles and policies of this 970.3102-2, and other pertinent parts of the DEAR. However, costs that are unallowable pursuant to other paragraphs of 970.3102 or contract terms shall not be allowable under this 970.3102-2 on the basis they constitute compensation for personnel services. Costs of compensation for personal services are reimbursable to the extent that:

(1) The compensation is for personal services work performed by the employee in the current year and must not represent a retroactive adjustment of prior year's salaries or wages (but see 970.3102-2 (i), (j), (l), (m), and (n));

(2) The compensation in total is reasonable for the work performed; however, specific restrictions on individual compensation elements must be observed where they are prescribed;

(3) The compensation is based upon and conforms to the terms and conditions of the contractor's established compensation plan or practice followed so consistently as to imply, in effect, an agreement to make the payment;

(4) Any approvals prescribed by this 970.3102-2 are obtained. No assumption of allowability will exist where the contractor introduces major revisions of existing compensation plans or new plans and the contractor—

(i) Has not notified the cognizant contracting officer of the changes either before their implementation, or within a reasonable period after their implementation, and

(ii) Has not provided the Government, either before implementation or within a reasonable period after it, an opportunity to review the allowability of the changes.

(5) Costs that are unallowable under the contract terms or other paragraphs of this 970.3102 shall not be allowable under this 970.3102-2 solely on the basis that they constitute compensation for personal services.

(c) *Reasonableness.* Subject to 970.3102-2(d) of this section compensation for personal services will be considered reasonable if the total compensation conforms generally to compensation paid by other firms of the same size, in the same industry, or in the same geographic area for similar services or work performed. This does not preclude the Government from challenging the reasonableness of an individual element of compensation where costs are excessive in comparison with compensation paid by other firms of the same size, same industry, or in the same geographic area for similar services. In administering this principle, it is recognized that not every compensation case need be subjected in detail to the above tests. The tests need be applied only when a general review reveals amounts or types of compensation that appear unreasonable or unjustified. In questionable cases, the contractor has responsibility to support the reasonableness of compensation in relation to the effort performed. Compensation costs under certain conditions give rise to the need for special consideration. Among such conditions are the following:

(1) Compensation to (i) owners of closely held corporations, partners, sole proprietors, or members of their immediate families, or (ii) persons who are contractually committed to acquire a substantial financial interest in the contractor's enterprise. Determination should be made that salaries are reasonable for the personal services rendered rather than being a distribution of profits. Compensation in lieu of salary for services rendered by partners and sole proprietors will be allowed to the extent that it is reasonable and does not constitute a distribution of profits. For closely held corporations, compensation costs covered by this subparagraph shall not be recognized in amounts exceeding those costs that are deductible as compensation under the Internal Revenue Code and its regulations.

(2) Any change in a contractor's compensation policy that results in a substantial increase in the contractor's level of compensation, particularly when it was concurrent with an increase in the ratio of Government contracts to other business, or any change in the treatment of allowability of specific types of compensation due to changes in the treatment of allowability of specific types of compensation due to changes in Government policy. No presumption of reasonableness will exist where major revisions of existing compensation plans or new plans are introduced by the contractor; and the contractor—

(i) Has not notified the cognizant contracting officer of the change either before their implementation or within a reasonable period after their implementation; and

(ii) Has not provided the Government, either before implementation or within a reasonable period after it, an opportunity to review the reasonableness of the changes.

(3) The contractor's business is such that its compensation levels are not subject to the restraints that normally occur in the conduct of competitive business.

(4) The contractor incurs costs for compensation in excess of the amounts which are deductible under the Internal Revenue Code and its regulations.

(d) *DOE review and approval of compensation paid individual employees.* In determining the reasonableness of compensation, the compensation of each individual contractor employee normally need not be subjected to review and approval. Generally, the compensation paid individual employees should be left to the judgment of contractors subject to the limitations of DOE-approved compensation policies, programs, classification systems, and schedules, and amounts of money authorized for wage and salary increases for groups of employees. However, all compensation due an individual of $60,000 or more shall require the contracting officer's or designee's review and approval. In addition, it will often be necessary that employee compensation be subjected to review and approval on an individual basis at a level below $60,000, when the contracting officer finds it appropriate for the particular situation. The contract shall specifically provide for the approval by the contracting officer of the cost of compensating an individual contractor employee above the level determined by the contracting officer, if a total of 50 percent or more of such compensation is reimbursed under DOE cost-type contracts. For purposes of determining the level for individual review and approval, total compensation as used in this paragraph includes only the employee's salary and bonus or incentive compensation. As in the case of other personnel and compensation costs, it is intended that contracting officer review and approval of individual compensation normally will be prior to incurrence of costs.

(e) *Labor-management agreements.* Notwithstanding any other DOE requirements, costs of compensation are not allowable to the extent that they result from provisions of labor-management agreements that, as applied to work in performing Government contracts, are determined to be unreasonable because they are either unwarranted by the character and circumstances of the work or discriminatory against the Government. The application of the provisions of a labor-management agreement designed to apply to a given set of circumstances and conditions of employment (e.g., work involving extremely hazardous activities or work not requiring recurrent use of overtime) is unwarranted when applied to a Government contract involving significantly different circumstances and conditions of employment (e.g., work involving less hazardous activities or work continually requiring use of overtime). It is discriminatory against the Government if it results in employee compensation (in whatever form or name) in excess of that being paid for similar non-Government work under comparable circumstances. Disallowance of costs will not be made under this paragraph (e) unless—

(1) The contractor has been permitted an opportunity to justify the costs; and

(2) Due consideration has been given to whether unusual conditions pertain to Government contract work, imposing burdens, hardships, or hazards on the contractor's employees, for which compensation that might otherwise appear unreasonable is required to attract and hold necessary personnel.

(f) *Salaries and wages.* Salaries and wages for current services include gross compensation paid to employees in the form of cash, stock (see paragraph (h)(2) of this section regarding valuation), products, or services, and are allowable.

(g) *Domestic and foreign differential pay.* (1) When personal services are performed in a foreign country, compensation may also include a differential that may properly consider all expenses associated with foreign employment such as housing, cost of living adjustments, transportation, bonuses, additional Federal, state, local or foreign income taxes resulting from foreign assignment, and other related expenses.

(h) *Bonuses and incentive compensation.* Incentive compensation and cash bonuses based on production, cost reduction or efficient performance, suggestion awards, and safety awards are to be treated as allowable, to the extent that the contractor's overall compensation plan is determined to be reasonable and such costs are paid or accrued, pursuant to an agreement entered into in good faith between the contractor and the employees before the services were rendered, or pursuant to an established plan followed by the contractor so consistently as to imply, in effect, an agreement to make such payment (see 970.3101-6). In determining reasonableness, it will be necessary to take into account, not only bonuses and incentive compensation payments charged directly to the contract, but also payments charged indirectly to the contract through overhead. Bonuses, awards, and incentive compensation, when any of them are deferred, are to be treated as allowable to the extent provided in paragraph (m) of this section.

(1) Bonuses and incentive compensation paid to employees other than those whose pay is directly reimbursed will not be made allowable in on-site construction and management and operating contracts, where home office general and administrative expense is unallowable.

(2) When the costs of bonuses and incentive compensation are paid in the stock of the contractor or of an affiliate, the following additional restrictions apply:

(i) Valuation placed on the stock shall be the fair market value on the measurement date (i.e., the first date the number of shares awarded is known) determined upon the most objective basis available; and

(ii) Accruals for the cost of stock before issuing the stock to the employees shall be subject to adjustment according to the possibilities that the employees will not receive the stock and that their interest in the accruals will be forefeited.

(3) When the bonus and incentive compensation payments are deferred, the costs are subject to the requirements of paragraph (h)(1) of this section and of paragraph (m) of this section.

(i) *Severance pay.* (1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages by contractors to workers whose employment is being involuntarily terminated. Payments for early retirement incentive plans are covered in paragraph (l)(6) of this section.

(2) Severance pay to be allowable must meet the general allowability criteria in paragraph (i)(2)(i) of this section, and, depending upon whether the severance is normal or abnormal, criteria in paragraph (i)(2)(ii) of this section for normal severance pay or paragraph (i)(2)(iii) of this section for abnormal severance pay also apply.

(i) Severance pay is allowable only to the extent that, in each case, it is required by (A) law, (B) employer-employee agreement, (C) established policy that constitutes, in effect, an implied agreement on the contractor's part, or (D) circumstances of the particular employment. Payments made in the event of employment with a replacement contractor where continuity of employment with credit for prior length of service is preserved under substantially equal conditions of employment, or continued employment by the contractor at another facility, subsidiary, affiliate, or parent company of the contractor are not severance pay and are unallowable.

(ii) Actual normal turnover severance payments shall be allocated to all work performed in the contractor's plant, or where the contractor provides for accrual of pay for normal severances, that method will be acceptable if the amount of the accrual is reasonable in light of payments actually made for normal severances over a representative past period and if amounts accrued are allocated to all work performed at the facility.

(iii) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis.

(3) Subject to paragraph (a) of this section, the following standards apply in determining allowability of costs for severance pay plans of management and operating contractors:

(i) Payments should be made only upon involuntary termination by reduction in force (RIF) of an employee which results in a permanent separation from the employment of the contractor. However, payments may also be made upon voluntary separation of an employee within a RIF grouping, but not otherwise scheduled for termination, which thereby eliminates the need for terminating another employee involuntarily.

(ii) Payments should be not provided for in the event of temporary layoffs; employment or offer of employment with a replacement contractor (employer) where continuity of employment with credit for prior length of service is preserved under substantially equal conditions of employment; early or normal retirement; or continued employment by the contractor at another facility, subsidiary, affiliate, or parent company of the contractor. Contractor employees should not have the option of refusing employment to receive severance pay.

(j) *Backpay—*(1) *Backpay resulting from violations of Federal labor laws or the Civil Rights Act of 1964.* Backpay may result from a negotiated settlement, order, or court decree that resolves a violation of Federal labor laws or the Civil Rights Act of 1964. Such backpay falls into two categories: one requiring the contractor to pay employees additional compensation for work performed for which they were underpaid, and the other resulting from other violations, such as when the employee was improperly discharged, discriminated against, or other circumstances for which the backpay was not additional compensation for work performed. Backpay resulting from underpaid work is compensation for the work performed and is allowable. All other backpay resulting from willful violation of Federal labor laws or the Civil Rights Act of 1964 is unallowable.

(2) *Other backpay.* Backpay may also result from payments to union employees (union and non-union) for the difference in their past and current wage rates for working without a contract or labor agreement during labor management negotiations. Such backpay is allowable. Backpay to nonunion employee based upon results of union agreement negotiations is allowable only if (i) a formal agreement or understanding exists between management and the employees concerning these payments, or (ii) an established policy or practice exists and is followed by the contractor so consistently as to imply, in effect, an agreement to make such payment.

(k) *Stock options, stock appreciation rights, and phantom stock plans.* (1) The cost of stock options awarded to employees to purchase stock of the contractor or of an affiliate will be treated as deferred compensation and must comply with the requirements of paragraph (m) of this section and with the allowability criteria contained in paragraph (k)(2) of this section. The allowable cost of stock appreciation rights, whether offered separately or combined with stock options, will be determined in the same manner as stock options.

(2) The allowable costs of stock options and stock appreciation rights will be limited to the difference between the option price or stock-appreciation-right price and the market price of the stock on the measurement date (i.e., the first date on which both the number of shares and the option or stock-appreciation-right price are known). Accordingly, when the option or stock-appreciation-right price is equal to or greater than the market price on the measurement date, then no costs are allowed for contract costing purposes.

(3) In phantom-stock-type plans, contractors assign or attribute contingent shares of stock to employees as if the employees own the stock, even though the employees neither purchase the stock nor receive title to it. Under these plans, an employee's account may be increased by the equivalent of dividends issued and any appreciation in the market price of the stock over the price of the stock on the measurement date (i.e., the first date the number of shares awarded is known). Such increases in employee accounts for dividend equivalents and market price appreciation are unallowable.

(l) *Pension costs.* (1) A pension plan is a deferred compensation plan that is established and maintained by one or more employers to provide systematically for paying benefits to plan participants after their retirement, provided that the benefits are paid for life or are payable for life at the option of the employee. Additional benefits such as permanent and total disability and death payments and survivorship payments to beneficiaries of deceased employees may be treated as pension costs, provided the benefits are an integral part of the pension plan and meet all the criteria pertaining to pension costs.

(2) Pension plans are normally segregated into two types of plans: defined benefit or defined contribution pension plans. Except as provided by other DOE directives, the cost of all defined benefit pension plans shall be measured, allocated, and accounted for in compliance with the provisions of CAS 412, Composition and Measurement of Pension Costs, and CAS 413, Adjustment and Allocation of Pension Cost. The costs of all defined contribution pension plans shall be measured, allocated, and accounted for in accordance with the provisions of CAS 412. Pension costs are allowable subject to directives issued by the Office of Labor Relations, Headquarters, the referenced standards and the cost limitations and exclusions set forth below in this paragraph and in paragraphs (l)(3), (4), (5), (6), and (7) below.

(i) To be allowable in the current year, pension costs must be funded by the time set for filing the Federal income tax return or any extension thereof. Pension costs assigned to the current year, but not funded by the tax return time, shall not be allowable in any subsequent year.

(ii) Pension payments must be reasonable in amount and be paid pursuant to (A) an agreement entered into in good faith between the contractor and employees before the work or services are performed and (B) the terms and conditions of the established plan. The cost of changes in pension plans which are discriminatory to the Government or are not intended to be applied consistently for all employees under similar circumstances in the future are not allowable.

(iii) Except as provided for early retirement benefits in paragraph (l)(6) below, one-time-only pension supplements not available to all participants of the basic plan are not allowable as pension costs unless the supplemental benefits represent a separate pension plan and the benefits are payable for life at the option of the employee.

(iv) Increases in payments to previously retired plan participants covering cost-of-living adjustments are allowable if paid in acordance with a policy or practice consistently followed.

(3) *Defined benefit pension plans.* This paragraph covers pension plans in which the benefits to be paid or the basis for determining such benefits are established in advance and the contributions are intended to provide the stated benefits. The cost limitations and exclusions pertaining to defined benefit plans are as follows:

(i) Normal costs of pension plans not funded in the year incurred, and all other components of pension costs (see CAS 412.40(a)(1)) assignable to the current accounting period but not funded during it, shall not be allowable in subsequent years (except that a payment made to a fund by the time set for filing the Federal income tax return or any extension thereof is considered to have been made during such taxable year). However, any part of a pension cost that is computed for a cost accounting period that is deferred pursuant to a waiver granted under the provisions of the Employee's Retirement Income Security Act of 1974 (ERISA) (see CAS 412.50(c)(3)), will be allowable in those future accounting periods in which the funding does occur. The allowability of these deferred contributions will be limited to the amounts that would have been allowed had the funding occurred in the year the costs would have been assigned except for the waiver.

(ii) Any amount paid or funded before the time it becomes assignable and allowable shall be applied to future years, in order of time, as if actually paid and deductible in those years. The interest earned on such premature funding, based on the valuation rate of return, may be excluded from future years' computations of pension costs in accordance with CAS 412.50(a)(7).

(iii) Increased pension costs caused by delay in funding beyond 30 days after each quarter of the year to which they are assignable are unallowable. If a composite rate is used for allocating pension costs between the segments of a company and if, because of differences in the timing of the funding by the segments, an inequity exists, allowable pension costs for each segment will be limited to that particular segment's calculation of pension costs as provided for in CAS 413.50(c)(5). Determination of unallowable costs shall be made in accordance with the actuarial method used in calculating pension costs.

(iv) Allowability of the cost of indemnifying the Pension Benefit Guaranty Corporation (PBGC) under ERISA section 4062 or 4064 arising from terminating an employee deferred compensation plan will be considered on a case-by-case basis; provided that if insurance was required by the PBGC under ERISA section 4023, it was so obtained and the indemnification payment is not recoverable under the insurance. Consideration under the foregoing circumstances will be primarily for the purpose of appraising the extent to which the indemnification payment is allocable to Government work. If a beneficial or other equitable relationship exists, the Government will participate in the indemnification payment to the extent of its fair share.

(4) Defined contribution pension plans. This paragraph covers those pension plans in which the contributions to be made are established in advance and the level of benefits is de-

termined by the contributions made. It also covers profit sharing, savings plans, and other such plans provided the plans fall within the definition of a pension plan in paragraph (l)(1) of this section.

(i) The pension cost assignable to a cost accounting period is the net contribution required to be made for that period after taking into account dividends and other credits, where applicable. However, any portion of pension cost computed for a cost accounting period that is deferred pursuant to a waiver granted under the provisions of ERISA (see CAS 412.50(c)(3)) will be allowable in those future accounting periods when the funding does occur. The allowability of these deferred contributions will be limited to the amounts that would have been allowed had the funding been made in the year the costs would have been assigned except for the waiver.

(ii) Any amount paid or funded to the trust before the time it becomes assignable and allowable shall be applied to future years, in order of time, as if actually paid and deductible in such years.

(iii) The provisions of paragraph (l)(3)(vi) of this section concerning payments to PBGC apply to defined contribution plans.

(5) *Pension plans using pay-as-you-go methods.* A pension plan using pay-as-you-go methods is a plan in which the contractor recognizes pension cost only when benefits are paid to retired employees or their beneficiaries. Regardless of whether the payment of pension benefits contribution can or cannot be compelled, allowable costs for these types of plans shall not exceed an amount computed as follows:

(i) Compute, by using an actuarial cost method, the plan's actuarial liability for benefits earned by plan participants. This entire liability is always unfunded for a pay-as-you-go plan.

(ii) Compute a level amount which, including an interest equivalent, would amortize the unfunded actuarial liability over a period of no less than 10 or more than 40 years from the inception of the liability.

(iii) Compute, by using an actuarial cost method, a normal cost for the period.

(iv) The sum of paragraphs (l)(5) (i), (ii), and (iii) of this section represents the amount of pension costs assignable to the current period. This amount, however, is limited to the amount paid in the year.

(v) For purposes of determining contract cost where a pay-as-you-go plan is initiated as either a supplemental plan or an additional but separate plan to a basic funded plan, the plans will be treated as one plan; e.g., the actuarial cost method, past service amortization period, etc., of the basic plan will be used on the supplemental or additional pay-as-you-go plan in determining the proper costs assignable to the current period. Any costs in excess of those determined by using the actuarial cost method and assumptions of the basic plan are unallowable. However, where assumption for salary progressions, mortality rates of the participants, and so forth are significantly different, the assumptions used for the basic and supplemental plan may be different.

(vi) The requirements of paragraphs (l)(3) (i) through (iv) of this section are also applicable to pay-as-you-go plans.

(6) *Early retirement incentive plans.* An early retirement incentive plan is a plan under which employees receive a bonus or incentive, over and above the requirement of the basic pension plan, to retire early. These plans normally are not applicable to all participants of the basic plan and do not represent life income settlements, and as such would not qualify as pension costs. However, for contract costing purposes, early retirement incentive payments are allowable subject to pension criteria contained in paragraphs (l)(3)(i) through (iv) provided—

(i) The costs are accounted for and allocated in accordance with the contractor's system of accounting for pension costs (see paragraph (l)(5)(v) of this section for supplemental pension benefits);

(ii) The payments are made in accordance with the terms and conditions of the contractor's plan;

(iii) The plan is applied only to active employees. The cost of extending the plan to employees who retired or were terminated before the adoption of the plan is unallowable; and

(vi) The total of the incentive payments to any employee may not exceed the amount of the employee's annual salary for the previous fiscal year before the employee's retirement.

(7) *Employee stock ownerhip plans (ESOP)*. (i) An ESOP is an individual stock bonus plan designed specifically to invest in the stock of the employer corporation. The contractor's contributions to an Employee Stock Ownership Trust (ESOT) may be in the form of cash, stock, or property. Costs of ESOP's are allowable subject to the following conditions:

(A) Contributions by the contractor in any one year may not exceed 15 percent (25 percent when a money purchase plan is included) of salaries and wages of employees partcipating in the plan in any particular year.

(B) The contribution rate (ratio of contribution to salaries and wages of participating employees) may not exceed the last approved contribution rate except when approved by the contracting officer based upon justification provided by the contractor. When no contribution was made in the previous year for an existing ESOP, or when a new ESOP is first established, and the contractor proposes to make a contribution in the current year, the contribution rate shall be subject to the contracting officer's approval.

(C) When a plan or agreement exists wherein the liability for the contribution can be compelled for a specific year, the expense associated with that liability is assignable only to that period. Any portion of the contribution not funded by the time set for filing of the Federal income tax return for that year or any extension thereof shall not be allowable in subsequent years.

(D) When a plan or agreement exists wherein the liability for the contribution cannot be compelled, the amount contributed for any year is assignable to that year provided the amount is funded by the time set for filing of the Federal income tax return for that year.

(E) When the contribution is in the form of stock, the value of the stock contribution shall be limited to the fair market value of the stock on the date that title is effectively transferred to the trust. Cash contributions shall be allowable only when the contractor furnishes evidence satisfactory to the contracting officer demonstrating that stock purchases by the ESOT are or will be at a fair market price; e.g., makes arrangements with the trust permitting the contracting officer to examine purchases of stock by the trust to determine that prices paid are at fair market value. When excessive prices are paid, the amount of the excess will be credited to the same indirect cost pools that were charged for the ESOP contributions in the year in which the stock purchase occurs. However, when the trust purchases the stock with borrowed funds which will be repaid over a period of years by cash contributions from the contractor to the trust, the excess price over fair market value shall be credited to the indirect cost pools pro rata over the period of years during which the contractor contributes the cash used by the trust to repay the loan. When the fair market value of unissued stock or stock of a closely held corporation is not readily determinable, the valuation will be made on a case-by-case basis taking into consideration the guidelines for valuation used by the IRS.

(ii) Amounts contributed to an ESOP arising from either (A) an additional investment tax credit (see 1975 Tax Reduction Act-TRASOP's); or (B) a payroll-based tax credit (see Economic Recovery Tax Act of 1981) are unallowable.

(iii) The requirements of paragraphs (l)(3)(ii) of this section are applicable to Employee Stock Ownership Plans.

(m) *Deferred compensation.* (1) Deferred compensation is an award given by an employer to compensate an employee in a future cost accounting period or periods for services rendered in one or more cost accounting periods before the date of receipt of compensation by the employee. Deferred compensation does not include the amount of year-end accruals for salaries, wages, or bonuses that are paid within a reasonable period of time after the end of a cost accounting period. Subject to 970.3102-2(a), deferred awards are allowable when they are based on current or future services. Awards made in periods subsequent to the period when the work being remunerated was performed are not allowable.

(2) The costs of deferred awards shall be measured, allocated, and accounted for in compliance with the provisions of CAS 415, Accounting for the Cost of Deferred Compensation.

(3) Deferred compensation payments to employees under awards made before the effective date of CAS 415 are allowable to the extent they would have been allowable under prior acquisition regulations.

(n) *Fringe benefits.* Fringe benefits are allowances and services provided by the contractor to its employees, as compensation, in addition to regular wages and salaries. Subject to the determination that total compensation is reasonable in accordance with this 970.3102-2, costs of fringe benefits such as pay for vacations, holidays, sick leave, military leave, employee insurance, pension, retirement plans, and supplemental unemployment benefit plans are to be treated as allowable, provided such fringe benefits meet the following conditions;

(1) The benefits contribute to the performance of contract work and are appropriate for reimbursement from public funds;

(2) Such benefit plans as exist in the contractor's private operations that are inconsistent with DOE published requirements are appropriately modified or disallowed;

(3) Employee benefit plans especially established to meet the particular needs of the contract are in conformity with published DOE policy and standards;

(4) Appropriate controls under the contract are established to assure that employees on contract work are treated no more or no less favorably than employees in the contractor's private operation, except to the extent that paragraphs (n)(2) and (3) of this section apply;

(5) To the fullest extent possible, definite limitations or terminal points are established for each of the various benefit plans, so that DOE's full liability with respect thereto is established under the contract; and

(6) DOE has access to all information necessary to complete understanding of the means of computing or determining the cost of the benefits afforded contract employees and their dependents under the benefit plans.

(o) *Training and education expenses.* See 970.5204-13 and 970.5204-14.

[49 FR 12063, Mar. 28, 1984, as amended at 49 FR 26744, June 29, 1984; 49 FR 32953, Oct. 2, 1984; 55 FR 5462, Feb. 15, 1990]

§ 970.3102-3 Cost of money.

Cost of money as an element of the (a) cost of facilities capital (CAS 414) and (b) cost of capital assets under construction (CAS 417) is not an allowable cost under DOE management and operating contracts. Under the provisions of CAS 414 and CAS 417, cost of money is an imputed cost applicable to contractor owned and financed tangible capital assets employed in contract performance or being constructed, fabricated, or developed for ultimate employment in contract performance. Cost of money is not applicable to DOE management and operating contracts since the Government provides for assets used, or under construction for use in performance of its contracts (such as through Government furnished or contractor-acquired Government property contract provisions and/or through granting cash advances, including letters-of-credit.)

§ 970.3102-4 Depreciation.

(a) Depreciation is allowable subject to the following:

(1) The charge represents normal depreciation on a contractor's plant and equipment used in performance of management and operating work.

(2) The charge to current operations is a distribution of the cost of acquisition of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset, in a systematic and logical manner.

(3) Any generally accepted accounting method consistently applied to assets concerned having the approval of the Internal Revenue Service for

Federal income tax purposes, if subject to the Internal Revenue Code of 1954, as amended, may be used including:

(i) The straight-line method;

(ii) The declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in paragraph (a)(3)(i) of this section;

(iii) The sum-of-the-years digits method;

(iv) Any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the use of the property and including the current year, does not, during the first two-thirds of the useful life of the property, exceed the total of such allowances which would have been used, had such allowances been computed under the method described in paragraph (a)(3)(ii) of this section.

(4) If a nonprofit or tax-exempt organization, the method shall be such that it could have had the approval of the Internal Revenue Service, had the organization been subject to the Internal Revenue Code of 1954, as amended.

(5) The contractor must use the same approved method of depreciation for costing its contract work as for costing its other work at the same facility.

(6) The method of depreciation shall produce equitable and reasonable results.

(b) Depreciation of the following is unallowable:

(1) Idle or excess facilities (machinery and equipment), other than reasonable standby facilities;

(2) Assets fully amortized or depreciated on the contractor's books;

(3) Unrealized appreciation of values of assets; and

(4) Accelerated amortization under Certificates of Necessity or other system in excess of normal depreciation, as computed under paragraph (a) of this section.

(c) In entering into contracts involving the use of "special facilities" under section 161 of the Atomic Energy Act of 1954, as amended (section 7 of Pub. L. 85-681 approved Aug. 19, 1958), the percentage of the total cost of such special facilities devoted to contract performance and chargeable to the DOE should not exceed the ratio between the period of contract deliveries and the anticipated useful life of such facilities.

970.3102-5 Employee morale, health, welfare, food service, and dormitory costs.

(a) Employee morale, health, and welfare activites are those services or benefits provided by the contractor to its employees to improve working conditions, employer-employee relations, employee morale, and employee performance. These activities include such items as house or employee publications, health or first-aid clinics, recreation, employee counseling services and, for the purpose of this section, food service and dormitory costs. However, these activities do not include, and should be differentiated from compensation for personal services as defined in 970.3102-2. Food and dormitory services include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations, or similar types of services for the contractor's employees at or near the contractor's facilities or site of the contract work.

(b) Except as limited by paragraph (c) of this section, the aggregate of costs incurred on account of all activities mentioned in paragraph (a) of this section, less income generated by all such activities, is allowable to the extent that the net aggregate cost of all such activities, as well as the net cost of each individual activity, is reasonable and allocable to the contract work. Additionally, advance understandings with respect to the costs mentioned in paragraph (a) of this section are to be reached prior to the incurrence of these costs as required in 970.3101-6.

(c) Losses from the operation of food or dormitory services may be included as costs incurred under paragraph (b) of this section, only if the contractor's objective is to operate such services at least on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to accomplishment of the above objective, are not allowable, except in those instances where the contractor can demonstrate that unusual circumstances exist, such that, even with efficient management, operation of the services on a break-even basis would require charging inordinately high prices, or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. Typical examples of such unusual circumstances are: (1) Where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available, or (2) where it is necessary to operate a facility at a lower volume than the facility could economically support. Cost of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

(d) In those situations where the contractor has an arrangement authorizing an employee association to provide or operate a service such as vending machines in the contractor's plant, and retain the profits derived therefrom, such profits shall be treated in the same manner as if the contractor were providing the service (but see paragraph (e) of this section).

(e) Contributions by the contractor to an employee organization, including funds set over from vending machines receipts or similar sources, may be included as cost incurred under paragraph (b) of this section, only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable, if incurred by the contractor directly.

970.3102-6 Facilities (plant and equipment).

(a) *Use of Government-owned facilities.* If the Government furnishes to the contractor, or the contractor acquires at Government expense, Government-owned equipment with which to do all or a significant amount of the work under the DOE contract, on which equipment the Government is bearing the expenses of depreciation, maintenance, insurance, and taxes, appropriate procedures must be established to avoid apportioning to DOE work performed with DOE-owned equipment, a share of the expenses of depreciation, maintenance, insurance and taxes on the contractor's equipment not used to perform such work. If the Government-owned equipment is placed in a segregated area, that area should be accounted for as a separate department. If the Government-owned equipment is not placed at the separate area, other steps must be taken to avoid what would amount to a double equipment burden on work performed with the Government-owned facilities. Such work shall be so accounted for as to be relieved of charges for expenses related to contractor's equipment not used in its performance.

(b) *Contractor's costs covering plant and equipment.* Charges relating to contractor-owned plant and equipment shall be restricted to the applicable costs, such as depreciation, maintenance, insurance, and taxes, and shall not be on a rental basis. (Compensation in excess of costs is covered by the fixed fee.) Rentals of plant or equipment owned by third parties are normally allowable, if the rates are reasonable in the light of the type, value, condition of the property involved, and option and other provisions of the lease agreement. However, where the plant and equipment used by the contractor is rented by the contractor under a sale and lease-back agreement, only the normal costs (such as depreciation, maintenance, insurance, and taxes) that would have been incurred if the contractor had retained title to the facilities, should be allowed. Allowances for plant and equipment rented under agreements that are not arms-length transactions should be similarly restrictive.

970.3102-7 Legislative lobbying costs.

Contractor costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature are not allowable contract costs and shall not be reimbursed by DOE. This statutory based cost prohibition (See 42 U.S.C.

7256a, as amended) is specified in the applicable cost principles clauses at 970.5204-13(e)(31) or 970.5204-14(e)(29). Definitive cost principle criteria for determining the types of legislative liaison activity costs which are not reimbursable under M&O contracts are set forth in the contract clause at 970.5204-17. The referenced clauses are effective, retroactively, as of January 14, 1987, and any change made to the cost principle criteria specified therein constitutes a deviation requiring Procurement Executive approval pursuant to 970.3100-3.

[53 FR 21648, June 9, 1988]

970.3102-8 Membership in trade, business and professional organizations.

(a) The costs of memberships in trade, business and technical organizations are unallowable, except as approved by the contracting officer.

(b) In considering approval of membership dues, the contracting officer shall:

(1) Ensure that dues payments to an organization are clearly justified and provide necessary and specific agency benefit;

(2) Do not constitute payments for, or in support of partisan and political activity; and,

(3) Are solely for purposes of enhancing trade, business, or technical knowledge necessary for, and related to, performance of DOE contracts.

970.3102-9 Outside technical and professional consultants.

Technical and professional consultants, as used here, refer to private individuals acting in their own behalf, who make their services available on a fee or per diem basis. It does not refer to employees of firms acting in the firm's behalf whose services may be made available by the firm on, for example, a fixed rate basis. Consultant arrangements may permit bringing to contract work, the services of outstanding specialists who would not be available on a full-time basis, or whose employment on a full-time basis would not be economically feasible. Costs of such outside consultant services are normally allowable (however, see 970.5204-13 and 970.5204-14 regarding compensation of an individual who is employed by another contractor and concurrently performing work on a full-time annual basis under a DOE cost-type contract), provided that the servies are essential to, and will make a material contribution to, the performance of contract work; the services may be performed more economically or more successfully by a consultant than by the contractor's regular personnel; the fee or per diem charged is reasonable; and, when approved by the contracting officer. If the cost of such services is charged directly to the DOE contract, the cost of like items properly chargeable only to other work of the contractor must be eliminated from indirect costs allocable to the DOE contract (see 970.3101-2).

[49 FR 12063, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984]

970.3102-10 Overtime, shift, and holiday premiums.

(a) Overtime, shift, and holiday premiums are allowable only to the extent provided in the contract or approved by the contracting officer. The amount of such premiums charged to a management and operating contract shall be equitable in relation to the amount of such costs charged to other work currently performed in the contractor's plant and the factors which necessitate incurrence of the costs. When the necessity for overtime, shift, and holiday work arises from inadequacy of the contractor's plant or department to perform its total workload on a purely straight-time basis, inclusions in overhead for apportionment to all work of the plant or department, as the case may be, appears appropriate. When particular work, DOE or other, is being specially expedited to a point that its fair share of the contractor's purely straight-time efforts on a single-shift basis will not get the particular job completed within the time desired, direct charging of the related premiums appears appropriate.

(b) When premiums for overtime, shift, and holiday work are charged direct to the work concerned, if the operating overhead of the plant or related department is distributed on the basis of direct labor (cost or hours), the premiums should be excluded from the direct labor base for purposes of overhead distribution. That is, the direct labor base should be, as appropriate, direct labor straight-time cost or direct labor hours actually worked. While the premiums for authorized overtime, shift, and holiday work are acceptable as reimbursable costs, it is generally recognized that direct labor hours worked on an overtime, shift, or holiday basis should participate in indirect costs to the same extent as hours worked on a straight-time basis.

970.3102-11 Page charges in scientific journals.

It is a policy of the DOE to permit DOE contractors to budget for and pay page charges for scientific journal publication, as a necessary part of research costs, in all cases where:

(a) The research papers report work supported by the Government.

(b) The charges are levied impartially on all research papers published by the journal, whether by non-Government or by Government authors.

(c) Payment of such charges is in no sense a condition for acceptance of manuscripts by the journal.

(d) The journals involved are not operated for profit.

(e) The author does not receive an emolument from the journal for the research paper.

970.3102-12 Plant reconversion costs.

Plant reconversion costs are those incurred in the restoration of the contractor's facilities to approximately the same condition existing immediately prior to the commencement of the contract work, fair wear and tear excepted.

970.3102-13 Precontract costs.

Precontract costs are those incurred prior to the effective date of the contract directly pursuant to the negotiation and in anticipation of the award of the contract, where such incurrence is necessary to comply with the proposed contract delivery schedule. Such costs are allowable to the extent that they would have been allowable if incurred after effective the date of the contract. They do not include costs of preparing bids or of participation in the negotiation. The allowability of precontract costs is dependent upon appropriate coverage in the contract.

970.3102-14 Preparatory and make-ready costs.

Since indirect costs are usually apportioned to individual jobs wholly or substantially on the basis of the direct labor applied to the particular job, a contract will absorb no overhead by apportionment prior to the inception of the actual performance of direct work on the contract. The effort of the contractor's overhead organization in preparing for one job and in getting it underway, will thus be absorbed by jobs previously commenced and still being performed; later, the job, which in its initial stages of preparation and make-ready was relieved of expenses that were actually applicable to it, will partially absorb, through their apportionment as overhead, similar costs equally applicable in fact to other, subsequently undertaken jobs. This procedure is in accordance with generally accepted accounting practices and normally is reasonably equitable in its results. The initial advantages and subsequent disadvantages to the individual contract that result from consistent application of the procedure tend to offset each other and balance out. It is quite appropriate, however, to employ the direct charge method in connection with overhead costs in preparing for actual performance by segregating such preparatory and make-ready costs and identifying them specifically with the contract to which the effort actually pertains. However, if preparatory and make ready costs are charged direct to a DOE contract, care must be taken, as performance of the DOE contract work proceeds toward completion, to segregate subsequent indirect expenses similarly applicable to the preparation for, and commencement of, other jobs and to account for them as direct charges to those other jobs.

970.3102-15 Procurement: Subcontracts and contractor-affiliated sources.

(a) *Subcontracts.* Award and management policies for subcontracts placed under operating contracts when necessary to the performance of the required services and work efforts of the management and operating contractor are set forth in 970.71. The cost of performing such subcontracts shall be allowable under the DOE contract when (1) the award/approval is otherwise in accord with the contract terms and conditions and the provisions of 970.71 and (2) the reimbursement of subcontractor costs of the management and operating contractor is in accordance with the provisions of the DOE cost principles set forth in FAR 31, as appropriate to the type of subcontractor being selected; i.e., commercial, educational, state/local government, or nonprofit organization.

(b) *Procurement or transfer from contractor-affiliated sources (See 970.7105).* Allowance for all equipment, materials, supplies, and services which are sold or transferred between any division, subsidiary, or affiliate of a management and operating contractor under a common control shall be on the basis of cost incurred in accordance with the terms of the contract; except, when it is the established practice of the transferring organization to price inter-organization transfers of equipment, materials, supplies, and services at other than cost for commercial work of the contractor or any division, subsidiary, or affiliate of the contractor under a common control, allowance may be at a price when:

(1) It is based on an "established catalog or market price of commercial items sold in substantial quantities to the general public" in accordance with FAR 15.8 or

(2) It is the result of "adequate price competition" in accordance with FAR 15.8 and is the price at which an award was made to the affiliated organization, after obtaining quotations of an equal basis from such organization and one or more outside sources which normally produce the item or its equivalent in significant quantity, provided that in either case:

(i) The price is not in excess of the transferor's current sales price to its most favored customer (including any division, subsidiary, or affiliate of the contractor under a common control) for a like quantity under comparable conditions, and

(ii) The price is not determined to be unreasonable by the contracting officer, provided, however, that if the price is determined unreasonable, such determination must be supported by an enumeration of facts on which it is based and approved at a level above the contracting officer. The price determined in accordance with paragraph (a) of this section should be adjusted, when appropriate, to reflect the quantities being procured and may be adjusted upward or downward to reflect the actual cost of any modifications necessary because of contract requirements.

[49 FR 12063, Mar. 28, 1984, as amended at 53 FR 24231, June 27, 1988]

970.3102-16 Relocation costs.

(a) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. The following types of costs are allowable as noted, subject to provisions of paragraphs (b), (c), and (d) of this section.

(1) Costs of travel of the employee and members of his/her immediate family and transportation of household and personal effects to the new location.

(2) Costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition periods, not exceeding separate cumulative totals of 60 days for employees and 45 days for spouses and dependents, including advance trip time.

(3) Closing costs (i.e., brokerage fees, legal fees, appraisal fees, points, finance charges, etc.) incident to the disposition of actual residence owned by the employee when notified of transfer; Provided that closing costs when added to the continuing costs described in (a)(6) of this section shall

not exceed 14% of the sales price of the property sold.

(4) Other necessary and reasonable miscellaneous expenses incident to relocation, such as disconnection and connecting household appliances; automobile registration; drivers license and use taxes; cutting and fitting rugs, draperies, and curtains; forfeited utility fees and deposits; and purchase of insurance against damage to or loss of personal property while in transit.

(5) Costs incident to the acquisition of a home in a new location, except that these costs will not be allowable for existing employees or newly recruited employees who prior to the relocation were not homeowners and the total costs shall not exceed 5% of the purchase price of the new home.

(6) Continuing costs of ownership of the vacant former actual residence being sold, such as maintenance of building and grounds (exclusive of fixing up expenses), utilities, taxes, property insurance, mortgage interest, etc., after settlement date or lease date of new permanent residence; *Provided* that when added to the closing costs described in (a)(3) of this section, the costs shall not exceed 14% of the sales price of the property sold.

(7) Mortgage interest differential payments, except that these costs are not allowable for existing or newly recruited employees who prior to the relocation were not homeowners, and the total payments are limited to an amount determined as follows:

(i) Difference between the mortgage interest rates of the old and new residence times the current balance of the old mortgage times 3 years; and

(ii) When mortgage differential payments are made on a lump sum basis and the employee leaves or is transferred again in less than 3 years, the amount initially recognized shall be proportionately adjusted to reflect payments only for the actual time of the relocation.

(8) Rental differential payments covering situations where relocated employees retain ownership of a vacated home in the old location and rent at the new location. The rented quarters at the new location must be comparable to those vacated, and the allowable differential payment may not exceed the actual rental costs for the new home, less the fair market rent for the vacated home times 3 years.

(9) Cost of canceling an unexpired lease.

(b) The costs described in (a) of this section must also meet the following criteria to be considered allowable.

(1) The move is for the benefit of the Government.

(2) Reimbursement must be in accordance with an established policy or practice and program that is consistently followed and is designed to motivate employees to relocate promptly and economically.

(3) Amounts to be reimbursed do not exceed the employee's actual expenses, except that for miscellaneous costs of the type discussed in (a)(4) of this section, a flat amount, not to exceed $1,000, may be paid in lieu of actual costs.

(c) The following types of costs are not allowable:

(1) Loss on sale of a home.

(2) Continuing mortgage principle payments on residence being sold.

(3) Cost incident to the acquisition of a home in a new location as follows:

(i) Real estate brokers fees and commissions;

(ii) Costs of litigation;

(iii) Real and personal property insurance against damage or loss of property;

(iv) Mortgage life insurance;

(v) Owner's title policy insurance when such insurance was not previously carried by the employees on the old residence (however, costs of a mortgage title policy is allowable) and;

(vi) Property taxes and operating or maintenance costs.

(4) Payments for employee's income taxes or FICA (social security taxes) incident to reimbursed relocation costs.

(5) Costs incident to furnishing equity or nonequity loans to employees or making arrangements with lenders for employees to obtain lower-than-market rate mortgage loans.

(d) If relocation costs for an employee have been allowed and the employee resigns within 12 months for reasons within the employee's control, it is expected the contractor shall refund or credit the relocation costs to the Government.

(e) Contractor payments to an independent relocation assistance firm handling acquisitions and sales of houses of transferred employees are allowable in amounts which otherwise represent payment for itemized cost which are allowable in accordance with the provisions of this section.

[49 FR 12063, Mar. 28, 1984, as amended at 54 FR 27649, June 30, 1989]

970.3102–17 Travel costs.

(a)(1) *Commercial air travel.* It is the policy of the DOE to require management and operating contractors to use the lowest commercial airfare accommodations for all necessary travel under the contract, except when such accommodations are not reasonably available. Airfare costs in excess of the lesser of the lowest available commercial discount airfare, Government contract airfare, or customary standard (coach or equivalent) airfare, shall be disallowed except where the use of such accommodations would: Require circuitous routing; require travel during unreasonable hours; excessively prolong travel; result in increased cost that would offset transportation savings; would offer accommodations not reasonably adequate for the physical or medical needs of the traveler; or are not reasonably available to meet necessary mission requirements. The contractor shall be required to establish appropriate airfare travel policies and procedures requiring the use of the lowest available commercial airfare consistent with the foregoing and prudent travel management. Where a contractor can reasonably demonstrate to the Contracting Officer, or designee, the nonavailability of discount airfare or Government contract airfare for a particular trip or, on an overall basis, that it is the contractor's practice to make routine use of such airfare, specific contractor determinations of nonavailability should generally not be questioned, unless a pattern of avoidance is detected. However, in order for airfare costs in excess of the customary standard commercial airfare to be allowable; e.g., use of first-class airfare, the contractor must be able to justify and document on a case-by-case basis the applicable condition(s) set forth above.

(2) *Air travel by other than commercial carrier.* "Cost of travel by contractor-owned, -leased, or -chartered aircraft," as used in this paragraph, includes the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance and other related costs. Costs of travel via contractor-owned, -leased, and -chartered aircraft shall not exceed the cost of commercial air travel accommodations, unless the management and operating contractor can demonstrate that costs in excess of such amounts are necessary for contract performance and that the increase in cost, if any, in comparison with alternative means of transportation is commensurate with the advantage gained.

(b) *Government-owned or commercial rental vechicles.* Commercial rental automobile costs in excess of the cost of a Government-furnished automobile or, when a Government-furnished automobile is not available, the cost of a Government-contract rental automobile available under a GSA Federal Supply Schedule contract, is unallowable unless:

(1) A Government-furnished or a Government contract rental automobile is not reasonably available to the traveler, or

(2) The traveler's use and the cost of a commercial rental automobile are justified and authorized as more advantageous to the Government.

(c) *Lodging, meals and incidental expenses.* (1) Costs for lodging, meals, and incidental expenses incurred by management and operating contractor personnel traveling on official business in the performance of contract work are allowable costs but subject to the limitations set forth in this subsection. Payments for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable cost to DOE.

(2) Except as provided in paragraph (c)(3) of this section, management and operating contractor payments for lodging, meals, and incidental expenses (as defined in the regulations cited in paragraphs (c)(2) (i) through

(iii) of this section) shall be considered to be reasonable and allowable cost only to the extent that they do not exceed, on a daily basis, the maximum per diem rates in effect at the time of travel as set forth in the:

(i) Federal Travel Regulations, prescribed by the General Services Administration, for travel in the conterminous 48 United States;

(ii) Joint Travel Regulations, Volume 2, DOD Civilian Personnel, Appendix A, prescribed by the Department of Defense, for travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States; or

(iii) Standardized Regulations (Government Civilians, Foreign Areas), section 925, "Maximum Travel Per Diem Allowances for Foreign Areas," prescribed by the Department of State, for travel in areas not covered in paragraphs (c)(2) (i) and (ii) of this section.

(3) In special or unusual situations, management and operating contractor personnel may be paid for actual expenses in excess of the above-referenced maximum per diem rates provided such payments do not exceed the higher amounts authorized for Federal civilians employees as permitted in the regulations referenced in paragraph (c)(2) (i), (ii) or (iii) of this section and all of the following conditions are met:

(i) One of the conditions warranting approval of the actual expense method, as set forth in the regulations referenced in paragraph (c)(2)(i), (ii) or (iii) of this section exist.

(ii) A written justification for payment of the higher amounts is approved by an officer or appropriate official of the management and operating contractor's organization.

(iii) Documentation exists to support the payment of actual expenses incurred and each employee expenditure in excess of $25.00 is supported by a receipt. The approved justification required by paragraph (c)(3)(ii) and, if applicable, DOE advance approvals required under paragraph (c)(5) of this section must also be retained.

(4) Paragraphs (c)(2) and (c)(3) of this section do not incorporate the regulations cited in paragraphs (c)(2) (i), (ii) and (iii) of this section in their entirety. Only the coverage in the referenced regulations dealing with special or unusual situations, the maximum per diem rates and the definitions of lodging, meals and incidental expenses are to be applied to management and operating contractors.

(5) An advance agreement with respect to compliance with paragraphs (c)(2) and (c)(3) of this section will be established in the personnel appendix of the contract. The management and operating contractor shall also be required to obtain advance approval from DOE, if it becomes necessary for the contractor to exercise the authority to make payments based in the higher actual expense method repetitively or on a continuing basis in a particular area. It is not intended that individual contractor authorizations to pay actual expenses in excess of applicable maximum per diem rates be approved in advance by DOE. Such before the fact, case-by-case approvals should only be invoked when the management and operating contractor does not have acceptable travel cost policies, procedures or practices in effect.

[49 FR 12063, Mar. 28, 1984 and 51 FR 43926, Dec. 5, 1986, as amended at 52 FR 1608, Jan. 14, 1987]

970.3102-18 Special funds in the construction industry.

Costs of special "funds," financed by employer contributions, in the construction industry for such purposes as methods and materials research, public and industry relations, market development, disaster relief, etc., are unallowable, execept as specifically authorized by the contracting officer and provided for in the contract.

970.3102-19 Public relations and advertising.

(a) "Public relations" means all functions and activities dedicated to:

(1) Maintaining, protection, and enhancing the image of a concern or its products; or

(2) Maintaining or promoting reciprocal understanding and favorable relations with the public at large, or any segment of the public. The term "public relations" includes activities

associated with areas such as advertising, customer relations, community service, etc.

(b) "Advertising" means the use of media to promote the sale of products or services and to accomplish the activities referred to in paragraph (d) of this section regardless of the medium employed, when the advertiser has control over the form and content of what will appear, the media in which it will appear, and when it will appear. Advertising media include but are not limited to conventions, exhibits, free goods, samples, magazines, trade papers, direct mail, dealer cards, window displays, outdoor advertising, radio, and television.

(c) Public relations and advertising costs include the costs of media time and space, purchased services performed by outside organizations, as well as the applicable portion of salaries, travel, and fringe benefits of employees engaged in the functions and activities identified in paragraphs (a) and (b) of this section.

(d) The only advertising costs that are allowable are those specifically required by contract, approved in advance by the Contracting Officer, or that arise from requirements of the contract and that are exclusively for:

(1) Recruiting personnel required for contract performance;

(2) Acquiring scarce items for contract performance;

(3) Disposing of scrap or surplus materials acquired for contract performance;

(4) The transfer of federally owned or originated technology to State and local governments and to the private sector; or

(5) Obtaining supplies and services including contract-required equipment, leases, banking services, etc.

Costs of this nature are allowable to the extent that they are determined by the Contracting Officer to be reasonable, necessary, and incident to contract performance.

(e) Allowable public relations costs include the following:

(1) Costs specifically required by contract, or approved in advance by the Contracting Officer.

(2) Costs of—

(i) Responding to inquiries on company policies and activities.

(ii) Communicating with the public, press, stockholders creditors, local communities, and customers, including responses to inquiries from and initiation of press releases and other communications with the news media.

(iii) Conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern such as notice of contract awards, plant closings or openings, employee layoffs or rehires, financial information environmental impact of plant operations, etc.

(3) Costs of participation in community service activities (e.g., blood bank drives, charity drives, savings bond drives, disaster assistance, outreach programs, etc.), exclusive of contractor cash contributions and donations which are unallowable. The contractor's cost of services or contractor-owned property provided to support community service activities (e.g., the contractor's cost of making payroll deductions for employee contributions to a charity, cost of employee services provided to community organizations, or other similar, nominal in-kind participation) is allowable.

(4) Costs of plant tours, visitors centers, and open houses (but see paragraph (f)(5) of this section).

(f) Unallowable public relations and advertising costs include the following activities except when the principal purpose of the activity or event is to disseminate technical information or stimulate production in accordance with contract requirements:

(1) All advertising costs other than those specified in paragraph (d) of this section.

(2) Costs of air shows and other special events, such as conventions and trade shows including:

(i) Costs of displays, demonstrations and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings.

(3) Costs of sponsoring meetings, symposia, seminars, and other special events.

(4) Costs of ceremonies such as corporate celebrations and new product announcements.

(5) Costs of promotional material, motion pictures, videotapes, brochures, handouts, magazines, and other media that are designed to benefit the contractor's organization by calling favorable public attention to contractor activities.

(g) Unallowable public relations and advertising costs include the following:

(1) Costs of souvenirs, models, imprinted clothing, buttons, and other mementos provided to customers or the public.

(2) Cost of memberships in civic and community organizations.

(3) All advertising and public relations costs, other than as specified in paragraphs (d), (e) and (f) of this section, whose primary purpose is to benefit the contractor's organization by promoting the sale of products or services by stimulating interest in a product or product line or by disseminating messages calling favorable attention to the contractor for purposes of enhancing the company image to sell the company's products or services unless such sales activities are required under the management and operating contract to support the DOE mission. Nothing in this paragraph (g)(3) modifies the express unallowability of costs listed in paragraphs (f), (g)(1) and (g)(2) of this section. The purpose of this paragraph is to provide criteria for determining whether advertising and public relations costs not specifically identified should be unallowable.

[52 FR 1608, Jan. 14, 1987]

970.3102-20 Defense of fraud proceedings.

(a) Definitions.

(1) "Costs," as used in this section, include, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; the costs of the services of accountants, consultants, or others retained by the contractor to assist it; the salaries and wages of employees, officers, and directors; and any of the foregoing costs incurred before commencing the formal judicial or administrative proceedings which bear a direct relationship to the proceedings.

(2) "Fraud," as used in this section, means (i) acts of fraud or corruption or attempts to defraud the Government or to corrupt its agents, (ii) acts specified under 10 CFR 1035.5(a)(1) which constitute a cause for debarment or suspension (see 10 CFR 1035.5 (a) and (b)) and (iii) acts which violate the False Claims Act, 31 U.S.C. sections 3729-3731, or the Anti-Kickback Act, 41 U.S.C., sections 51 and 54.

(b) Costs incurred in connection with defense of any (1) criminal or civil investigation, grand jury proceeding, or prosecution, (2) civil litigation, or (3) administrative proceedings such as debarment or suspension proceedings for acts specified under 10 CFR 1035.5(a)(1), or any combination of the foregoing, brought by the Government against a contractor, its agents or employees, are unallowable when the charges, which are the subject of the investigation, proceedings, or prosecution, involve fraud or similar offenses (including filing of a false certification) on the part of the contractor, its agents or employees, and result in conviction (including conviction entered on a plea of nolo contendere), judgment against the contractor, its agents or employees, or decision to debar or suspend, or are resolved by consent or compromise.

(c) In circumstances where the charges of fraud are resolved by consent or compromise, the parties may agree as to the extent of allowability of such costs as a part of such resolution.

(d) Costs which may be unallowable under this section, including directly associated costs, shall be differentiated and accounted for by the contractor so as to be separately identifiable. During the pendency of any proceeding or investigation covered by paragraph (b) of this section, the Contracting Officer should generally withhold payment of such costs. However, the Contracting Officer may, in appropriate circumstances, provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreements by the contractor to repay all unallowable costs, plus interest, if a conviction or judgment is rendered against it.

[52 FR 1609, Jan. 14, 1987]

970.3102-21 Fines and penalties.

It is DOE policy to reimburse management and operating contractors for fines and penalties that are incurred in the performance of their contracts. Any such reimbursement for fines and penalties incurred under the contract will be made as long as such fines and penalties are not the result of the willful misconduct or lack of good faith on the the part of the contractor's corporate officers, directors or supervising representatives.

[52 FR 1610, Jan. 14, 1987]

970.3103 Contract clauses.

(a) The appropriate cost principles clause at 970.5204-13 or 970.5204-14 shall be included in a management and operating contract.

(b) The legislative lobbying cost prohibition clause at 970.5204-17 shall be included in all M&O contracts.

[49 FR 12090, Mar. 28, 1984. Correctly designated at 52 FR 1610, Jan. 14, 1987, and amended at 53 FR 21648, June 9, 1988]

Subpart 970.32—Contract Financing

970.3201 General.

It is the policy of the DOE to finance management and operating contracts through advance payments and use of Special Bank Accounts. Appropriate procedures for properly managing and controlling funds for obligation and expenditure under a management and operating contract are maintained by the Office of Controller.

970.3202 Advance payments.

(a) The Head of the Contracting Activity, shall authorize advance payments without interest; and approve the findings, determinations and the contract terms and conditions concerning advance payments in accordance with the procedures set forth in FAR Subpart 32.4, Advance Payments, as amended by Subpart 932.4.

(b) Advance payments shall be made under a letter-of-credit arrangement for deposit in a special bank account.

(c) Prior to providing any advance payments, the contracting officer shall enter into an agreement with the contractor and a financial institution, regarding a special bank account where the advanced funds are to be deposited by the Government. Such agreement shall (1) provide that DOE shall retain title to the unexpended balance of funds in the special bank account including revenues if any, deposited by the contractor; and that such title shall be superior to any claim or lien of the bank of deposit and (2) incorporate as necessary or appropriate, additional financial provisions required by Treasury or Departmental financial regulations.

(d) Deviations from these specified requirements cited in paragraph (c) above shall be considered a deviation requiring approval of the Head of the Contracting Activity.

(e) Letter-of-Credit arrangements shall be prepared in accordance with FAR 32.406, Letters of Credit, and shall be coordinated between the procurement and finance organizations.

970.3270 Clauses.

The clauses at 970.5204-16 shall be included in management and operating contracts when advances of funds are to be placed in a special bank account. They may be appropriately modified to incorporate any additional provisions that may be required by governing financial regulations of the Treasury Department or the Department.

970.3271 Special bank account agreement.

NOTE: The following agreement shall be used with special bank accounts in accordance with 970.3202(c).

Agreement entered into this —— day of ———, 19 —, between the United States of America (hereinafter called the Government) represented herein by the Department of Energy (hereinafter called the "DOE"), and ——— (hereinafter called the "Contractor," a corporation under the laws of the State of ———, and ———, (hereinafter called the "Bank,") a banking corporation under the laws of ———, located at ———.

RECITALS

(a) On the date of ———, 19 --, DOE and the Contractor entered into Contract(s) No. ———, or a supplemental agreement thereto, providing for the making of advances of Government funds to the contractor a copy of such advance provisions has been furnished to the Bank.

(b) DOE requires that amounts advanced to the Contractor under said contract or supplemental agreement be deposited in a Special Bank Account or accounts with a bank designated by the Treasury Department as depositary and financial agent of the Government (Section 10 of the Act of June 11, 1942, 56 Stat. 356; 12 U.S.C. 265), separate from any of the Contractor's general or other funds; and, the Bank being such a bank, the parties are agreeable to so depositing said amounts with the Bank.

(c) This Special Bank Account shall be designated "——— (Name of Contractor), —— (Contract Number), Department of Energy Special Bank Account."

COVENANTS

In consideration of the foregoing, and for other good and valuable considerations, it is agreed that,

(1) The Government shall have title to the credit balance in said account to secure the return of all advances made to the contractor, which title shall be superior to any lien or claim of the Bank or others with respect to such account.

(2) The Bank will be bound by the provisions of said contract or contracts relating to the deposit and withdrawal of funds in the above Special Bank Account, but shall not be responsible for the application of funds properly withdrawn from said account. After receipt by the Bank of written directions from the Contracting Officer, or from the duly authorized representative of the Contracting Officer, the Bank shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions.

(3) The Government, or its authorized representatives, shall have access to the books and records maintained by the Bank with respect to such Special Bank Account at all reasonable times and for all reasonable purposes, including, without limitation, the inspection or copying of such books and records and any and all memoranda, checks, correspondence, or documents pertaining thereto. Except as agreed upon by the Government and the Bank, all books and records pertaining to the Special Bank Account in the possession of the Bank relating to the Special Bank Account agreement shall be preserved by the Bank for a period of three (3) years after final payment under the contract to which the Special Bank Account agreement pertains or otherwise disposed of in such manners as may be agreed upon by the Government and the Bank.

(4) In the event of the services of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the Special Bank Account, the Bank will promptly notify the Head of Contracting Activity, DOE.

In witness whereof the parties hereto have caused this Agreement to be executed, as of the day and year first above written.

(Signatures and Official Titles) ————

Subpart 970.36—Construction and A-E Contracts

970.3601 Special construction clause for operating contracts.

The clause in 970.5204-38 shall be used in management and operating contracts when the contractor will not perform covered work with its own forces but may procure construction by subcontract.

[49 FR 12063, Mar. 28, 1984. Redesignated at 53 FR 24231, June 27, 1988]

Subpart 970.49—Termination of Contracts

970.4901 General.

All management and operating contracts, regardless of whether they are for production, research and development, or services, shall contain appropriate termination provisions.

[49 FR 12063, Mar. 28, 1984, as amended at 53 FR 24231, June 27, 1988]

970.4902 Termination clause.

The clause at 970.5204-45 shall be inserted into management and operating contracts.

Subpart 970.51—Use of Government Sources by Contractors

970.5101 Use of Government supply sources.

(a) Management and operating contractors should meet their acquisition requirements from Government sources of supply, when these sources are made available to them and if it is economically advantageous or otherwise in the best interest of the Government.

(b) Contracting officers may authorize management and operating contractors and their subcontractors with cost-reimbursement type subcontracts, where all higher-tier subcontracts are cost-reimbursement types, to acquire materials and services directly from such Government sources of supply in accordance with the requirements of this subpart or the consent of agencies involved.

(c) Materials, supplies, and equipment procured from Government sources of supply under the procedures described herein must be used exclusively in connection with management and operating contract work, except as otherwise authorized by Heads of Contracting Activities.

(d) Many supply facilities and contracts of the Department of Defense are made available to DOE and its management and operating contractors. Accordingly:

(1) Requisitions or purchase orders shall be submitted directly to these sources, unless otherwise specified. Field offices will be notified by the Procurement Executive, or designee, when such contracts and facilities are made available. Inquiries in connection with these sources may be directed to the Procurement Executive.

(2) Contractor requisitions submitted to Defense Logistics Centers should include the following statement. "The consignee of the supplies and materials requisitioned herein is acting in behalf of and as agent for the Department of Energy with respect to the expenditure of Government funds." Orders submitted directly to DOD contractors shall be accompanied by an authorization substantially similar to that in FAR 51.103.

(e) Contracting officers, when reviewing the procurement systems and methods of contractors that have been authorized to use Government sources of supply, shall assure that provision is made for documenting the justification of procurements from commercial sources of items available from Government sources of supply.

(f) Direct procurement by DOE, rather than by a management and operating contractor, shall be required where deemed necessary by the Head of the Contracting Activity in order to carry out special requirements of appropriation acts or other applicable laws relating to particular items.

(g) The Procurement Executive shall be informed of instances in which Government sources of supply are not used because of the quality of the items available or when a Federal Supply Schedule contractor refuses to honor an order.

[49 FR 12063, Mar. 28, 1984; 49 FR 38953, Oct. 2, 1984]

970.5102 Use of interagency motor pool vehicles and related services.

The provisions of FAR subpart 51.2, FPMR 41 CFR 101-39, and DOE-PMR 41 CFR 109-39 apply.

Subpart 970.52—Contract Clauses for Management and Operating Contracts

970.5201 General policy.

Many of the clauses set forth in subparts of FAR Part 52 and Part 952 of this chapter apply to management and operating contracts. The clauses in this subpart are to be used in addition to or in place of the FAR or the DEAR counterpart contract clauses where appropriate. Further modifications and notes to certain FAR clauses are also prescribed, in addition to those set forth in Part 952.

970.5202 Deviations.

Deviations from the standard contract clauses and modifications to FAR clauses set forth herein, as well as from the standard contract clauses prescribed in FAR Part 52 and Part 952 of this Chapter, shall be made only in accordance with the deviation procedures of Subpart 901.4. Minor changes in wording which may become necessary in the course of negotiations are not considered deviations, provided Counsel determines that the change is not prohibited by statue, executive order, or administrative regulation and does not alter the meaning, intent, or basic principles expressed in these clauses.

970.5203 Modifications and notes to FAR clauses.

970.5203-1 Covenant against contingent fees.

See FAR 52.203-5.

NOTE: *Modify this clause by adding the following paragraph:*

(c) Subcontracts and purchase orders. Unless otherwise authorized by the Contracting Officer in writing, the contractor shall cause provisions similar to the foregoing to be inserted in all subcontracts and purchase orders entered into under this contract.

970.5203-2 Examination of records by Comptroller General.

See FAR 52.215-1.

NOTE: The following paragraph (e) should be included in management and operating contracts when the clause at FAR 52.215-1 is required. It may be omitted only with the approval of the Procurement Executive, upon a specific determination, based on consultation with the Office of the Controller and the Office of the General Counsel, that nothing in the contract purports to preclude an audit by the General Accounting Office of any transaction thereunder.

(e) Nothing in this contract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this contract.

970.5203-3 Buy American Act.

See FAR 52.225-3.

NOTE: Substitute "used" for "delivered" in paragraph (b).

970.5204 Clauses to be used in addition to or in place of the contract clauses set forth in FAR 52 and DEAR 952.

970.5204-1 Security.

Use the clauses at 952.204-2, Security and 952.204-70, Classification.

970.5204-2 Safety and health (Government-owned or leased).

SAFETY AND HEALTH (GOVERNMENT OWNED OR LEASED) (APR 1984)

The contractor shall take all reasonable precautions in the performance of the work under this contract to protect the safety and health of employees and of members of the public and shall comply with all applicable safety and health regulations and requirements (including reporting requirements) of DOE. The contracting officer shall notify the contractor, in writing, of any noncompliance with the provisions of the clause and the corrective action to be taken. After receipt of such notice, the contractor shall immediately take corrective action. The contractor shall submit a management program and implementation plan to the contracting officer for review and approval within 30 days after the date of award of this contract. In the event that the contractor fails to comply with said regulations or requirements of DOE, the contracting officer may, without prejudice to any other legal or contractual rights of DOE, issue an order stopping all or any part of the work; thereafter, a start order for resumption of the work may be issued at the discretion of the contracting officer. The contractor shall make no claim for an extension of time or for compensation or damages by reason of, or in connection with, such work stoppage.

970.5204-3 Buy American Act—Construction materials.

Include the clause at FAR 52.225-5 when the contract contains construction.

970.5204-4 New Mexico Gross Receipts and Compensating Tax.

See FAR 52.229-10.

NOTE.—In small paragraph (b) of this clause, replace the phrase "Allowable Cost and Payment clause" with "Allowable Costs and Fixed Free Clause" or, if it is different, the title of the clause addressing allowable costs.

[55 FR 5462, Feb. 15, 1990]

970.5204-5 Disclosure of information.

Clause located at 952.204-72 use as prescribed at 970.0404-4.

970.5204-6 Nuclear hazards indemnity.

See 952.250-70.

970.5204-7 Nuclear hazards indemnity—product liability.

See 952.250-71.

970.5204-8 Indemnity assurance to architect-engineer or supplier prior to operation of a production or utilization facility.

See 952.250-72.

970.5204-9 Accounts, records, and inspection.

ACCOUNTS, RECORDS, AND INSPECTION (APR 1984)

(a) *Accounts.* The contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting all allowable costs incurred, revenues or other applicable credits, fixed-fee accruals, and the receipt, use, and disposition of all Government property coming into the possession of the contractor under this contract. The system of accounts employed by the contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.

NOTE: *If the contract includes the clause for* "Price Reduction for Defective Cost or Pricing Data" *set forth at FAR 52.215-22, paragraph* (a) *above should be modified by adding the words* "or anticipated to be incurred" *after the words* "allowable costs incurred."

(b) *Inspection and audit of accounts and records.* All books of account and records relating to this contract shall be subject to inspection and audit by DOE at all reasonable times, before and during the period of retention provided for in (d) below, and the contractor shall afford DOE proper facilities for such inspection and audit.

(c) *Audit of subcontractors' records.* The contractor also agrees, with respect to any subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the contracting officer.

(d) *Disposition of records.* Except as agreed upon by the Government and the contractor, all financial and cost reports, books of account and supporting documents, and other data evidencing costs allowable, revenues, and other applicable credits under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the contractor either as the contracting officer may from time to time direct during the progress of the work or, in any event, as the contracting officer shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as provided in this contract, all other records in the possession of the contractor relating to this contract shall be preserved by the contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the contractor.

(e) *Reports.* The contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the contracting officer may from time to time require.

(f) *Inspections.* The DOE shall have the right to inspect the work and activities of the contractor under this contract at such time in such manner as it shall deem appropriate.

(g) *Subcontracts.* The contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through this paragraph (g) of this clause in all subcontracts (including fixed-price of unit-piece subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

NOTE: *If the prime contract contains a "Defective Cost or Pricing Data" clause, this paragraph (g) shall be modified by adding the following:*

The contractor further agrees to include an audit clause, the substance of which is the "Audit" clause set forth at FAR 52.215-22, in each subcontract which does not include provisions similar to those in paragraph (a) through this paragraph (g) of this clause, but which contains a "defective cost or pricing data" clause.

(h) *Internal audit.* The contractor agrees to conduct an internal audit and examination satisfactory to DOE of the records, operations, expenses, and the transactions with respect to costs claimed to be allowable under this contract annually and at such other times as may be mutually agreed upon. The results of such audit, including the working papers, shall be submitted or made available to the contracting officer.

NOTE: This paragraph (h) shall be included in (a) all cost-type contracts (or subcontracts) involving an estimated cost exceeding $5 million and expected to run more than 2 years, and (b) any other cost-type contract (or subcontract) where deemed advisable by the Head of the Contracting Activity advisable by the Head of the Contracting Activity and when the contactor (or subcontractor) already has an established internal audit organization.

970.5204-10 Foreign ownership, control, or influence over contractors (FOCI).

(a) Insert the clause at 952.204-73 in a solicitation for a management and operating contract.

(b) Insert the clause at 925.204-74 in management and operating contracts as prescribed at 970.0404-4.

970.5204-11 Changes.

CHANGES (APR 1984)

(a) *Changes and adjustment of fee.* The contracting officer may at any time and without notice to the sureties, if any, issue written directions within the general scope of this contract requiring additional work or directing the omission of, or variation in, work covered by this contract. If any such direction results in a material change in the amount or character of the work described in the "Statement of Work," an equitable adjustment of the fee, if any, shall be made in accordance with the agreement of the parties and the contract shall be modified in writing accordingly. Any claim by the contractor for an adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the contractor of the notification of change; provided, however, that the contracting officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. A failure to agree on an equitable adjustment under this clause shall be deemed to be a dispute within the meaning of the clause entitled "Disputes."

(b) *Work to continue.* Nothing contained in this clause shall excuse the contractor from proceeding with the prosecution of the work in accordance with the requirements of any direction hereunder.

970.5204-12 Contractor's organization.

CONTRACTOR'S ORGANIZATION (APR 1984)

(a) *Organization chart.* As promptly as possible after the execution of this Contract, the contractor shall furnish to the contracting officer a chart showing the names, duties, and organization of key personnel to be employed in connecting with the work, and shall furnish from time to time supplementary information reflecting changes therein.

(b) *Supervisory representative of contractor.* Unless otherwise directed by the contracting officer, a competent full-time resident supervisory representative of the contractor satisfactory to the contracting officer shall be in charge of the work at the site at all times. This also applies to off-site work.

(c) *Control of employees.* The contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to his employees as may be necessary. In the event the contractor fails to remove any employee from the contract work whom DOE deems incompetent, careless, or insubordinate, or whose continued employment on the work is deemed by DOE to be contrary to the public interest, the Government reserves the right to require the contractor to remove the employee.

NOTE: In contracts identified in 970.2272, the following paragraph shall be substituted for (c) above:

(c) The contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. The contractor shall establish such standards and procedures as are necessary to implement effectively the provisions set forth in 970.2272, and such standards and procedures shall be subject to the approval of the contracting officer.

[49 FR 12063, Mar. 28, 1984; 49 FR 38953, Oct. 2, 1984]

970.5204-13 Allowable costs and fixed-fee (Management and Operating contracts).

ALLOWABLE COSTS AND FIXED-FEE (MANAGEMENT AND OPERATING CONTRACTS) (JUNE 1988)

(a) *Compensation for contractor's services.* Payment for the allowable costs as hereinafter defined, and of the fixed-fee, if any, as hereinafter provided, shall constitute full and complete compensation for the performance of the work under this contract.

(b) *Fixed-fee.* The fixed-fee payable to the contractor for the performance of the work under this contract is $——. There shall be no adjustment in the amount of the contractor's fixed-fee by reason of differences between any estimate of cost for performance of the work under this contract and the actual costs for performance of that work.

NOTE: *This provision to this paragraph may be appropriately changed to cover situations where the fee is for a period of time or different fees are allowed for various phases of the work.*

(c) *Allowable costs.* The allowable cost of performing the work under this contract shall be the costs and expenses that are actually incurred by the contractor in the performance of the contract work in accordance with its terms, that are necessary or incident thereto, and are determined to be allowable pursuant to this paragraph (c). The determination of the allowability of cost hereunder shall be based on: (1) Reasonableness, including the exercise of prudent business judgment; (2) consistent application of generally accepted accounting principles and practices that result in equitable charges to the contract work; and (3) recognition of all exclusions and limitations set forth in this clause or elsewhere in this contract as to types or amounts of items of cost. Allowable costs shall not include the cost of any item described as unallowable in paragraph (e) of this clause except as indicated therein. Failure to mention an item of cost specifically in paragraph (d) or paragraph (e) shall not imply either that it is allowable or that it is unallowable.

(d) *Items of allowable cost.* Subject to the other provisions of this clause, the following items of cost of work done under this contract shall be allowable to the extent indicated:

(1) Bonds and insurance, including self-insurance, as provided in the clause entitled "Required Bonds and Insurance—Exclusive of Government Property."

(2) Communication costs, including telephone services, local and long-distance calls, telegrams, cablegrams, postage, and similar items.

(3) Consulting services (including legal and accounting), and related expenses, as approved by the contracting officer, except as made unallowable by paragraphs (e)(16) and (e)(26).

(4) Litigation expenses, including reasonable Counsel fees, incurred in accordance with the clause of this contract entitled "Litigation and Claims."

(5) Losses and expenses (including settlements made with the consent of the contracting officer) sustained by the contractor in the performance of this contract and certified in writing by the contracting officer to be reasonable, except the losses and expenses expressly made unallowable under other provisions of this contract.

(6) Materials, supplies, and equipment, including freight transportation, material handling, inspection, storage, salvage, and other usual expenses incident to the procurement, use and disposition thereof, subject to approvals required under other provisions of this contract.

(7) Patents, purchased design, and royalty payments to the extent expressly provided for under other provisions in this contract or as approved by the contracting officer, and preparation of invention disclosures, reports and related documents, and searching the art to the extent necessary to make such invention disclosures in accordance with any "Patent Rights" clause of this contract.

(8) Personnel costs and related expenses incurred in accordance with the personnel appendix which is hereby incorporated by reference and made a part of this contract. It is specifically understood and agreed that said personnel appendix sets forth in detail personnel costs and related expenses to be allowable under this contract and is intended to document those personnel policies, practices and plans which have been found acceptable by the contracting officer. It is further understood and agreed that the contractor will advise DOE of any proposed changes in any matters covered by said policies, practices or plans which relate to this item of cost, and that the personnel appendix may be modified from time to time in writing by mutual agreement of the contractor and DOE without execution of an amendment to this contract for the purpose of effectuating any such changes in, or additions to, said personnel appendix as may be agreed upon by the parties. Such modifications shall be evidenced by execution of written numbered approval letters from the contracting officer or his representative. Types of personnel costs and related expenses to be incorporated into the personnel appendix, or amendments thereto, are as follows:

(i) Salaries and wages; bonuses and incentive compensation; overtime, shift differential, holiday, and other premium pay for time worked; nonwork time, including vacations, holidays, sick, funeral, military, jury, witness, and voting leave; salaries and wages to employees in their capacity as union stewards and committeemen for time spent in handling grievances, or serving on labor management (contractor) committees, provided, however, that the contracting officer's approval is required in each instance of total compensation to an individual employee at an annual rate of $——— (see 970.3102-2) or more, when it is proposed that a total of 50 percent or more of such compensation be reimbursed under DOE cost-type contracts. Total compensation, as used here, includes only the employee's base salary, bonus, and incentive compensation payments;

(ii) Legally required contributions to old-age and survivors' insurance, unemployment compensation plans, and workmen's compensation plans, (whether or not covered by insurance); voluntary or agree-upon plans providing benefits for retirement, separation, life insurance, hospitalization, medical surgical and unemployment (whether or not such plans are covered by insurance);

(iii) Travel (except foreign travel, which requires specific approval by the contracting officer on a case-by-case basis); incidental subsistence and other allowances of contractor employees, in connection with performance of work under this contract (including new employees reporting for work and transfer of employees, the transfer of their household goods and effects and the travel and subsistence of their dependents;

(iv) Employee relations, welfare, morale etc.; programs including incentive or sugg tion awards; employee counseling services, health or first-aid clinics; house or employee publications;

(v) Personnel training (except special education and training courses and research assignments calling for attendance at educational institutions which require specific approval by the Contracting Officer on a case-by-case basis); including apprenticeship training programs designed to improve efficiency and productivity of contract operations, to develop needed skills, and to develop scientific and technical personnel in specialized fields required in the contract work;

(vi) Recruitment of personnel (including help-wanted advertisement), including service of employment agencies at rates not in excess of standard commercial rates, employment office, travel of prospective employees at the request of the contractor for employment interviews; and

(vii) Net cost of operating plant-site cafeteria, dining rooms, and canteens attributable to the performance of the contract.

NOTE: *In appropriate circumstances, the lead sentence in subparagraph (d)(8) may be changed to read as follows:*

"Personnel costs and related expenses incurred in accordance with established policies, programs, and schedules, and any changes thereto during the contract term, applicable to the contractor's private operations and consistently followed throughout his organization, as approved by the contracting officer, such as".

(9) Repairs, maintenance, inspection, replacement, and disposal of Government-owned property and the restoration or clean-up of site and facilities to the extent directed or approved by the contracting officer.

(10) Subcontracts and purchase orders, including procurements from contractor-controlled sources, subject to approvals required by other provisions of this contract.

(11) Subscriptions to trade, business, technical, and professional periodicals, as approved by the contracting officer.

(12) Taxes, fees, and charges levied by public agencies which the contractor is required by law to pay, except those which are expressly made unallowable under other provisions of this contract.

(13) Utility services, including electricity, gas, water, and sewerage.

(14) Indemnification of the Pension Benefit Guaranty Corporation, pursuant to the Employee Retirement Income Security Act of 1974, in accordance with FAR 31.205-6(j)(3)(iv).

(15) Establishment and maintenance of bank accounts in connection with the work hereunder, including, but not limited to, service charges, the cost of disbursing cash, necessary guards, cashiers, and paymasters. If payments are made by check, facilities and arrangements for cashing checks may be provided without expense to the employees, subject to the approval of the contracting officer.

NOTE: *The following additional examples apply when the contractor performs construction.*

(16) Camp operations, to the extent approved by the contracting officer.

(17) Maintenance, inspection, repair, replacement, and transportation of construction plant and equipment to the extent not covered by rentals or insurance and as provided in rental agreements approved by the contracting officer.

(18) Rental for (i) construction plant and equipment rented by the contractor from others at rates and under written agreements approved by the contracting officer, and (ii) construction plant and equipment owned and furnished by the contractor under this contract.

(e) *Items of unallowable costs.* The following items of costs are unallowable under this contract to the extent indicated:

(1) Advertising and public relations costs designed to promote the contractor or its products, including the costs of promotional items and memorabilia such as models, gifts and souvenirs, and the cost of memberships in civic and community organizations; except those advertising and public relations costs

(i) Specifically required by the contract,

(ii) Approved in advance by the Contracting Officer as clearly in furtherance of work performed under the contract,

(iii) That arise from requirements of the contract and that are exclusively for recruiting personnel, acquiring scarce items for contract performance, disposing of scrap or surplus materials, the transfer of federally owned or orginated technology to State and local governments and to the private sector, or acquisition of contract-required supplies and services, or

(iv) Where the primary purpose of the activity is to facilitate contract performance in support of the DOE mission.

(2) Bad debts (including expenses of collection) and provisions for bad debts arising out of other business of the contractor.

(3) Proposal expenses and costs of proposals.

(4) Bonuses and similar compensation under any other name, which (i) are not pursuant to an agreement between the contractor and employee prior to the rendering of the services or an established plan consistently followed by the contract or (ii) are in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder, or (iii) provide total compensation to an employee in excess of rea-

sonable compensation for the services rendered.

(5) Central and branch office expenses of the contractor, except as specifically set forth in the contract.

(6) Commissions, bonuses, and fees (under whatever name) in connection with obtaining or negotiating for a Government contract or a modification thereto, except when paid to bona fide employees or bona fide established selling organizations maintained by the contractor for the purpose of obtaining Government business.

(7) Contingency reserves, provisions for.

(8) Contributions and donations, including cash, contractor-owned property and services, regardless of the recipient.

(9) Depreciation in excess of that calculated by application of methods approved for use by the Internal Revenue Code of 1954, as amended, including the straight-line declining balance (using a rate not exceeding twice the rate which would have been used had the depreciation been computed under the straight line method), or sum-of-the-years digits method, on the basis of expected useful life, to the cost of acquisition of the related fixed assets less estimated salvage or residual value at the end of the expected useful life.

(10) Dividend provisions or payments and, in the case of sole proprietors and partners, distributions of profit.

(11) Entertainment, including costs of amusement, diversion, social activities; and directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities; costs of membership in any social, dining or country club or organization, except the costs of such recreational activities for on-site employees as may be approved by the Contracting Officer or provided for elsewhere in the contract.

(12) Fines and penalties, including assessed interest, resulting from violations of, or failure of the contractor to comply with, Federal, State, local or foreign laws and regulations, except when incurred as a result of compliance with the scope of work, specific terms and conditions, or other provisions of the contract or written instructions from the contracting officer authorizing in advance such payments.

(13) Government-furnished property, except to the extent that cash payment therefor is required pursuant to procedures of DOE applicable to transfers of such property to the contractor from others.

(14) Insurance (including any provisions of a self-insurance reserve) on any person where the contractor under the insurance policy is the beneficiary, directly or indirectly, and insurance against loss of or damage to Government property as defined in Clause ———.

(15) Interest, however represented (except interest incurred in compliance with the clause entitled "State and local taxes"), bond discounts and expenses, and costs of financing and refinancing operations.

(16) Legal, accounting, and consulting services and related costs incurred in connection with the preparation and issuance of stock, rights, organization or reorganization, prosecution or defense of antitrust suits, prosecution of claims against the United States, contesting actions of proposed actions of the United States, and prosecution or defense of patent infringement litigation.

(17) Losses (including litigation expenses, Counsel fees, and settlements) on, or arising from the sale, exchange, or abandonment of capital assets, including investments; losses on other contracts, including the contractor's contributed portion under cost-sharing contracts; losses in connection with price reductions to and discount purchases by employees and other from any source; and losses where such losses or expenses:

(i) Are compensated for by insurance or otherwise or which would have been compensated by insurance required by law or by written direction of the contracting officer but which the contractor failed to procure or maintain through its own fault or negligence;

(ii) Result from willful misconduct or lack of good faith on the part of any of the contractor's directors, corporate officers, or a supervising representative of the contractor, as defined in Clause ——— of this contract.

(iii) Represent liabilities to third persons from which the contractor has expressly accepted responsibility under other terms of this contract.

(18) Maintenance, depreciation, and other costs incidental to the contractor's idle or excess facilities (including machinery and equipment), other than reasonable standby facilities.

NOTE: *May be omitted when no contractor-owned equipment is being utilized in the performance of the contract.*

(19) Membership in trade, business, and professional organizations, except as approved by the contracting officer.

(20) Precontract costs, except as expressly made allowable under the provisions in this contract.

(21) Research and development costs, unless specifically provided for elsewhere in this contract.

(22) Selling cost, except to the extent they are determined to be reasonable and to be allocable to the contract. Allocability of selling costs to the contract will be determined in the light of reasonable benefit to the agency program arising from such activities as technical, consulting, demonstration, and

other services performed for such purposes as applying or adapting the contractor's product for agency use.

(23) Storage of records pertaining to this contract after completion of operations under this contract, irrespective of contractual or statutory requirement for the preservation of records.

(24) Taxes, fees, and charges in connection with financing, refinancing, or refunding operations, including listing of securities on exchanges, taxes which are paid contrary to the clause entitled "State and local taxes," federal taxes on net income and exess profits, special assessments on land which represent capital improvement and taxes on accumulated funding deficiencies of, or prohibited transactions involving, employee deferred compensation plans pursuant to section 4971 or section 4975 of the Internal Revenue Code of 1954, as amended, respectively.

(25) Travel expenses of the officers, proprietors, executives, administrative heads and other employees of the contractor's central office or branch office organizations concerned with the general management, supervision, and conduct of the contractor's business as a whole, except to the extent that particular travel is in connection with the contract and approved by the contracting officer.

(26) Salary or other compensation (and expenses related thereto) of any individual employed under this contract as a consultant or in another comparable employment capacity who is an employee of another organizational and concurrently performing work on a full-time annual basis for that organization under a cost-type contract with DOE, except to the extent that cash payment therefor is required pursuant to the provisions of this contract or procedure of DOE applicable to the borrowing of such an individual from another cost-type contractor.

(27) Travel by commercial aircraft or travel by other than common carrier that is not necessary for the performance of this contract or the cost of which exceeds the lesser of the lowest available commercial discount airfare, Government contract airfare, or customary standard (coach or equivalent) commercial airfare. Airfare costs in excess of the lowest such airfare are unallowable, except when such accommodations: Require circuitous routing; require travel during unreasonable hours; excessively prolong travel; result in increased cost that would offset transportation savings; would offer accommodations not reasonably adequate for the physical or medical needs of the traveler; or are not reasonably available to meet necessary mission requirements. Individual contractor determinations of nonavailability of commercial discount airfare or Government contract airfare will not be contested by DOE when the contractor can reasonably demonstrate such nonavailability or, on an overall basis, that established policies and procedures result in the routine use of the lowest available airfare. However, in order for air travel costs in excess of customary standard airfare to be allowable, the contractor must justify and document the applicable condition(s) set forth above.

(28) Special construction industry "funds" financed by employer contributions for such purposes as methods and materials research, public and industry relations, market development, and disaster relief, except as specifically provided elsewhere in this contract.

(29) Late premium payment charges related to employee deferred compensation plan insurance.

(30) Facilities capital cost of money. (CAS 414 and CAS 417).

(31) Cost incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature as delineated in the clause titled "Legislative Lobbying Cost Prohibition" incorporated elsewhere in this contract.

(32) Commercial automobile rental expenses unless approved by the Contracting Officer.

(33) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the Government where the contractor, its agents or employees, is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(34) Costs of alcoholic beverages.

(35) Contractor employee travel costs incurred for lodging, meals and incidental expenses which exceed on a daily basis the applicable maximum per diem rates in effect for Federal civilian employees at the time of travel. When the applicable maximum per diem rate is inadequate due to special or unusual situations, the contractor may pay employees for actual expenses in excess of such per diem rate limitation. To be allowable, however, such payments must be properly authorized by an officer or appropriate official of the contractor and shall not exceed the higher amounts that may be authorized for Federal civilian employees a similar situation.

[49 FR 12063, Mar. 28, 1984; 49 FR 38953, Oct. 2, 1984, as amended at 51 FR 43926, Dec. 5, 1986; 52 FR 1610, Jan. 14, 1987; 52 FR 38426, Oct. 16, 1987; 53 FR 21648, June 9, 1988; 54 FR 27649, June 30, 1989]

970.5204-14 Allowable costs and fixed-fee (support contracts).

ALLOWABLE COSTS AND FIXED-FEE (SUPPORT CONTRACTS) (JUNE 1988)

(a) *Compensation for contractor's services.* Payment for the allowable cost as hereinafter defined, and of the fixed-fee, if any, as hereinafter provided, shall constitute full and complete compensation for the performance of the work under this contract.

(b) *Fixed-fee.* The fixed-fee payable to the contractor for the performance of the work under this contract is $. There shall be no adjustment in the amount of the contractor's fixed-fee by reason of differences between any estimate of cost for perfomance of the work under this contract and the actual cost for performance of that work.

NOTE: *This provision to this paragraph may appropriately be changed to cover situations where the fee is for a period of time, or different fees are allowed for various phases of the work.*

(c) *Allowable cost.* The allowable costs for performing the work under this contract shall be the costs and expenses that are actually incurred by the contractor, are applicable and properly chargeable, either as directly incident or as allocable through appropriate distribution or apportionment, to the performance of the contract work in accordance with its terms, and are determined to be allowable pursuant to this paragraph (c). The determination of the allowability of cost hereunder shall be based on (1) reasonableness, including the exercise of prudent business judgment, (2) consistent application of generally accepted accounting principles and practices that result in equitable charges to the contract work, and (3) recognition of all exclusions and limitations set forth in this clause or elsewhere in this contract as to types or amounts of items of costs. Allowable cost shall not include costs of any item described as unallowable in paragraph (e) of this clause, except as indicated therein. Failure to mention an item of cost specifically in paragraph (d) or paragraph (e) shall not imply either that it is allowable or that it is unallowable.

(d) *Items of allowable cost.* Subject to the other provisions of this clause, the following items of cost of work under this contract shall be allowable to the extent indicated:

(1) Bonds and insurance (including self-insurance) as provided in the clause entitled "Required bonds and insurance—exclusive of Government property."

(2) Communication costs, including telephone services, local and long-distance telephone calls, telegrams, cablegrams, radiograms, postage, and similar items.

(3) Consulting services (including legal and accounting) and related expenses, as approved by the contracting officer, except as made unallowable by paragraph (e)(14) and (e)(23).

(4) Litigation expenses, including reasonable Counsel fees, incurred in accordance with the clause of this contract entitled "Litigation and Claims."

(5) Losses and expenses (including settlements made with the consent of the contracting officer) sustained by the contractor in performance of this contract and certified in writing by the Contracting Officer to be just and reasonable, except the losses and expenses expressly made unallowable under other provisions of this contract.

(6) Materials and supplies (including those withdrawn from common stores costed in accordance with any generally recognized method that is consistently applied by the contractor and productive of equitable results).

(7) Patents, purchased design, and royalty payments to the extent expressly provided for under other provisions in this contract or as approved by the contracting officer, and preparation of invention disclosures, reports, and related documents, and searching the art to the extent necessary to make such invention disclosures in accordance with the Patent Rights clause of this contract.

(8) Personnel costs and related expenses incurred in accordance with the personnel appendix which is hereby incorporated by reference and made a part of this contract. It is specifically understood and agreed that said personnel appendix sets forth, in detail, personnel costs and related expenses to be allowable under this contract and is intended to document those personnel policies, practices and plans which have been found acceptable by the contracting officer. It is further understood and agreed that the contractor will advise DOE of any proposed changes in any matters covered by said policies, practices, or plans which relate to this item of costs, and that the personnel appendix may be modified from time to time in writing by mutual agreement of the contractor and DOE without execution of an amendment to this contract for the purpose of effectuating and such changes in, or additions to, said personnel appendix, as may be agreed upon by the parties. Such modifications shall be evidenced by execution of written numbered approval letters from the contracting officer or his representative. Examples of personnel costs and related expenses to be incorporated into the personnel appendix, or amendments thereto, are as follows:

(i) Salaries and wages; bonuses and incentive compensation; overtime, shift differential, holiday, and other premium pay for time worked; nonwork time including vacations, holidays, sick, funeral, military, jury.

witness, and voting leave; salaries and wages to employees in their capacity as union stewards and committeemen for time spent in handling grievances, or serving on labor management (contractor) committees, provided, however, that the contracting officer's approval is required in each instance of total compensation to an individual employee at an annual rate of $——— (See 970.3102-2) or more, when it is proposed that a total of 50 percent or more of such compensation be reimbursed under DOE cost-type contracts. Total compensation, as used here, includes only the employee's base salary and bonus and incentive compensation payments.

(ii) Legally required contributions to old-age and survivor's insurance, unemployment, compensation plans, and workmen's compensation plans (whether or not covered by insurance); voluntary or agreed-upon plans providing benefits for retirement, separation, life insurance, hospitalization, medical-surgical and unemployment (whether or not such plans are covered by insurance);

(iii) Travel (except foreign-travel, which requires specific approval by the contracting officer on a case-by-case basis); incidental subsistence and other allowances of contractor employees, in connection with performance of work under this contract (including new employees reporting for work and transfer of employees, the transfer of their household goods and effects, and the travel and subsistence of their dependents);

(iv) Employee relations, welfare, morale, etc., programs, including incentive or suggestion awards, employee counseling services, health or first-aid clinics, and house or employee publications;

(v) Personnel training (except special education and training courses and research assignments calling for attendance at educational institutions which require specific approval by the contracting officer on a case-by-case basis) including services of employment agencies at rates not in excess of standard commercial rates, employment office, travel of prospective employees at the request of the contractor for employment interviews; and

(vi) Recruitment of personnel (including help-wanted advertisement) including services of employment agencies at rates not in excess of standard commercial rates, employment office, travel of prospective employees at the request of the contractor for employment interviews; and

(vii) Net cost of operating plant-site cafeterias, dining rooms, and canteens attributable to the performance of the contract.

NOTE: *In appropriate circumstances that lead sentence in subparagraph (d)(8) may be changed to read as follows:*

Personnel costs and related expenses incurred in accordance with established policies, programs, and schedules, and any changes thereto during the contract term, applicable to the contractor's private operations and consistently followed throughout its organization, as approved by the contracting officer, such as:

(9) Rentals and leases of land, buildings, and equipment owned by third parties where such items are used in the performance of the contract, except that such rentals and leases directly chargeable to the contract shall be subject to approval by the contracting officer.

(10) Repairs, maintenance, inspection, replacement, and disposal of Government-owned property to the extent directed or approved by the contracting officer.

(11) Repairs, maintenance, and inspection of contractor owned property used in connection with the performance of this contract, including reasonable standby facilities, which are due to ordinary wear and tear from use and the action of the elements, provided such maintenance and repairs keep the property in efficient operating condition and do not add to its permanent value or appreciably prolong its intended useful life; and major repair (including replacement) to such property, as directed or approved by the contracting officer when charged directly to the contract.

(12) Special tooling, including jigs, dies, fixtures, molds, patterns, designs and drawings, tools, and equipment of a specialized nature generally useful to the contractor only in the performance of this contract.

NOTE: *Itemize any additional special equipment which may be appropriate, such as loops, mockups, experimental setups, etc.*

(13) Subcontracts, purchase orders, and procurement from contractor-controlled sources, subject to approvals required by other provisions of this contract.

(14) Subscriptions to trade, business, technical, and professional periodicals, as approved by the Contracting Officer when charged directly to the contract.

(15) Taxes, fees, and charges levied by public agencies which the contractor is required by law to pay, except those which are expressly made unallowable under other provisions of this contract.

(16) Utility services, including electricity, gas, water, steam, and sewerage.

(17) Indemnification of the Pension Benefit Guaranty Corporation pursuant to the Employee Retirement Income Security Act of 1974, in accordance with FAR 31.205-6(j).

(e) *Items of unallowable costs.* The following examples of items of costs are unallowable under this contract to the extent indicated:

(1) Advertising and public relations costs designed to promote the contractor or its products, including the costs of promotional items and memorabilia such as models, gifts

and souvenirs, and the cost of memberships in civic and community organizations; except those advertising and public relations costs (i) specifically required by the contract, (ii) approved in advance by the Contracting Officer as clearly in furtherance of work performed under the contract, (iii) that arise from requirements of the contract and that are exclusively for recruiting personnel, acquiring scarce items for contract performance disposing of scrap or surplus materials, the transfer of federally owned or originated technology to State and local governments and to the private sector, or acquisition of contract-required supplies and services, publicizing community involvement, or (iv) where the primary purpose of the activity is to facilitate contract performance in support of the DOE mission.

(2) Bad debts (including expenses of collection) and provisions for bad debts not arising out of the performance of this contract.

(3) Bonuses and similar compensation under any other name, which (i) are not pursuant to an agreement between the contractor and employee prior to the rendering of the services or an established plan consistently followed by the contractor (ii) are in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder, or (iii) provide total compensation to an employee in excess of reasonable compensation for the services rendered.

(4) Commissions, bonuses, and fees (under whatever name) in connection with obtaining or negotiating for a Government contract or a modification thereto, except when paid to bona fide employees or bona fide established selling organizations maintained by the contractor for the purpose of obtaining Government business.

(5) Contingency reserves, provisions for (except provisions for reserves under a self-insurance program to the extent that the type, coverage, rates, and premiums would be allowable if commercial insurance were purchased to cover the same risk, as approved by the contracting officer).

(6) Contributions and donations, including cash, contractor-owned property and services, regardless of the recipient.

(7) Depreciation in excess of that calculated by application of methods approved for use by the Internal Revenue Service under the Internal Revenue Code of 1954, as amended, including the straight-line declining balance (using a rate not exceeding twice the rate which would have been used had the depreciation been computed under the straight-line method) or sum-of-the-years digits method, on the basis of expected useful life, to the cost of acquisition of the related fixed assets less estimated salvage or residual value at the end of the expected useful life. Amortization or depreciation of unrealized appreciation of values of assets or of assests fully amortized or depreciated on the contractors books of account is unallowable.

(8) Dividend provisions or payments and, in the case of sole proprietors and partners, distributions of profits.

(9) Entertainment, including costs of amusement, diversion, social activities; any directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities; costs of membership in any social, dining or country club or organization, except the costs of such recreational activities for on-site employees as may be approved by the Contracting Officer or provided for elsewhere in the contract.

(10) Fines and penalties, including assessed interest, resulting from violations of, or failure of the contractor to comply with, Federal, State, local or foreign laws and regulations, except when incurred as a result of compliance with the scope of work, specific terms and conditions, or other provisions of the contract or written instructions from the contracting officer authorizing in advance such payments.

(11) Government-furnished property, except to the extent that cash payment therefor is required pursuant to procedures of the DOE applicable to transfers of such property to the contractor from others.

(12) Insurance (including and provision of a self-insurance reserve) on any person where the contractor under the insurance policy is the beneficiary, directly or indirectly, and insurance against loss or damage to Government property.

(13) Interest, however represented (excepted interest incurred in compliance with the clause entitled "State and Local Taxes), bond discounts and expenses, and costs of financing and refinancing operations.

(14) Legal, accounting, and consulting services, and related costs incurred in connection with the preparation of prospectuses, preparation and issuance of stock rights, organization or reorganization, prosecution or defense of antitrust suits, prosecution of claims against the United States, contesting actions or proposed actions of the United States, and prosecution or defense of patent infringement litigation.

(15) Losses, including litigation expenses, Counsel fees, and settlement on, or arising from the sale, exchange, or abandonment of capital assets, including investments; losses on other contracts, including the contractor's contributed portion under cost-sharing contracts; losses in connection with price reduction to and discount purchases by employees and others from any sources; and losses where such losses or expenses:

(i) Are compensated for by insurance or otherwise, or which would have been compensated by insurance required by law or by written direction of the contracting officer, but which the contractor failed to procure or maintain through its own fault or negligence, or which could have been covered by permissible insurance in keeping with ordinary business practice, but which the contractor failed to secure or maintain;

(ii) Result from willful misconduct or lack of good faith on the part of any of the contractor's directors, corporate officers, or a supervising representative of the contractor.

(iii) Represent liabilities to third persons for which the contractor has expressly accepted responsibility under other terms of this contract.

(16) Maintenance, depreciation, and other costs incidental to the contractor's idle or excess facilities (including machinery and equipment) other than reasonable standby facilities.

(17) Membership in trade, business, and professional organizations except as approved by the contracting officer.

(18) Precontract costs, except as expressly made allowable under other provisions in this contract.

(19) Reconversion, alteration, restoration, or rehabilitation of the contractor's facilities, except as expressly provided elsewhere in this contract.

(20) Selling costs, except to the extent they are determined to be reasonable and to be allocable to the contract. Allocability of selling costs to the contract will be determined in the light of reasonable benefit to the agency program arising from such purposes as applying or adapting the contractor's product for agency use.

(21) Storage or records pertaining to this contract after completion of operations under this contract irrespective of contract or statutory requirement for the preservation of records.

(22) Taxes, fees, and charges in connection with financing, refinancing or refunding operations, including the listing of securities on exchanges; taxes which are paid contrary to the clause entitled "State and local taxes;" Federal taxes on net income and excess profits; special assessments on land which represent capital improvement and taxes on accumulated funding deficiencies of, or prohibited transactions involving, employee deferred compensation plans pursuant to section 4971 or section 4975 of the Internal Revenue Code of 1954, as amended, respectively.

(23) Salary or other compensation (and expenses related thereto) of any individual employed under this contract as a consultant or in another comparable employment capacity who is an employee of another organization and concurrently performing work on a full-time annual basis for that organization under a cost-type contract with DOE, except to the extent that cash payment thereto is required pursuant to the provisions of this contract or procedures of the DOE applicable to the borrowing of such an individual from another cost-type contractor.

(24) Travel by commercial aircraft or travel by other than common carrier that is not necessary for the performance of this contract or the cost of which exceeds the lesser of the lowest available commercial discount airfare, Government contract airfare, or customary standard (coach or equivalent) commercial airfare. Airfare costs in excess of the lowest such airfare are unallowable, except when such accommodations: Require circuitous routing; require travel during unreasonable hours; excessively prolong travel; result in increased cost that would offset transportation savings; would offer accommodations not reasonably adequate for the physical or medical needs of the traveler; or are not reasonably available to meet necessary mission requirements. Individual contractor determinations of nonavailability of commercial discount airfare or Government contract airfare will not be contested by DOE when the contractor can reasonably demonstrate such nonavailability or, on an overall basis, that established policies and procedures result in the routine use of the lowest available airfare. However, in order for air travel costs in excess of customary standard airfare to be allowable, the contractor must justify and document the applicable condition(s) set forth above.

(25) Late premium payment charges related to employee deferred compensation plan insurance, in accordance with FAR 31.205-6(j).

(26) Research and development costs, unless specifically provided for elsewhere in this contract.

(27) Bidding expenses and costs of proposals.

(28) Facilities capital cost of money (CAS-414 and CAS-417).

(29) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature as delineated in the clause titled "Legislative Lobbying Cost Prohibition" incorporated elsewhere in this contract.

(30) Commercial automobile rental costs unless approved by the contracting officer.

(31) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the Government where the contractor, its agents or employees, is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(32) Costs of alcoholic beverages.

(33) Contractor employee travel costs incurred for lodging, meals and incidental expenses which exceed on a daily basis the applicable maximum per diem rates in effect for Federal civilian employees at the time of travel. When the applicable maximum per diem rate is inadequate due to special or unusual situations, the contractor may pay employees for actual expenses in excess of such per diem rate limitation. To be allowable, however, such payments must be properly authorized by an officer or appropriate official of the contractor and shall not exceed the higher amounts that may be authorized for Federal civilian employees in a similar situation.

[49 FR 12063, Mar. 28, 1984, as amended at 51 FR 43926, Dec. 5, 1986; 52 FR 1610, Jan. 14, 1987; 53 FR 21649, June 9, 1988]

970.5204-15 Obligation of funds.

OBLIGATION OF FUNDS (APR 1984)

(a) *Obligation of funds.* The amount presently obligated by the Government with respect to this contract is ——— dollars ($———). Such amount may be increased unilaterally by DOE by written notice to the contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification of this contract). Estimated revenues and receipts from others for work and services to be performed under this contract are not included in this amount ——— obligated with respect to this contract. Such revenues and receipts, to the extent actually received by the contractor shall be available and used for the payment of allowable costs as provided in the article entitled "Payments and Advances." Nothing in this paragraph (a) is to be construed as authorizing the contractor to exceed limitations stated in financial plans established by DOE and furnished to the contrator from time to time under this contract.

(b) *Limitation on payment by the Government.* Except as otherwise provided in this contract and except for costs which may be incurred by the contractor pursuant to the article entitled "Termination," or costs of claims allowable under the contract occurring after completion or termination and not released by the contractor at the time of financial settlement of the contract is in accordance with the article entitled "Payments and Advances," payment by the Government under this contract on account of allowable costs shall not, in the aggregate, exceed the amount obligated with respect to this contract, less the contractor's fixed fee. Unless expressly negated in this contract, payment on account of those costs excepted in the preceding sentence which are in excess of the amount obligated with respect to this contract shall be subject to the availability of (1) revenues and receipts deposited to the Government's account as provided in the article entitled "Payments and Advances," and (2) other funds with DOE may legally use for such purpose, provided DOE will use its best efforts to obtain the appropriation of funds for this purpose if not otherwise available.

(c) *Notices—Contractor excused from further performance.* The contractor shall notify DOE in writing whenever the unexpended balance of funds (including revenues and receipts) available under paragraph (a) above, plus the contractor's best estimate of revenues and receipts to be received during the —— day period hereinafter specified, is in the contractor's best judgment sufficient to continue contract operations at the programmed rate for only —— days and to cover the contractor's unpaid fixed fee, and outstanding commitments and liabilities on account of costs allowable under the contract at the end of such period. Whenever the unexpended balance of funds (including revenues and receipts) available under paragraph (a) above, less the amount of the contractor's fixed fee then earned but not paid is in the contractor's best judgment either sufficient only to liquidate outstanding commitments and liabilities on account of costs allowable under this contract or is equal to zero, the contractor shall immediately notify DOE and shall made no further commitments or expenditures (except to liquidate existing commitments and liabilities, and, unless the parties otherwise agree, the contractor shall be excused from further performance (except such performance as may become necessary in connection with termination by the Government) and the performance of all work hereunder will be deemed to have been terminated for the convenience of the Government in accordance with the provisions of the article entitled "Termination."

(d) *Financial plans; cost and commitment limitations.* In addition to the limitations provided for elsewhere in this contract, DOE may, through financial plans or other directives issued to the contractor, establish controls on the costs to be incurred and commitments to be made in the performance of the contract work. Such plans and instruction may be amended or supplemented from time to time by DOE. The contractor hereby agrees to comply with the specific limitations (ceilings) on costs and commitments set forth in such plans and directives, to use its best efforts to comply with other requirements of such plans and directives and to promptly notify DOE in writing whenever it has reason to believe the authorized financial levels of costs and commitments will be exceeded or substantially underrun.

NOTE: *This paragraph (d) may be omitted in contracts which expressly or otherwise provided a contractual basis for equivalent controls in a separate article.*

(e) *Government's right to terminate not affected.* The giving of any notice under this article shall not be construed to waive or impair any right of the Government to terminate the contract under the provisions of the article entitled "Termination."

970.5204-16 Payments and advances.

PAYAMENT AND ADVANCES (JULY 1990)

(a) *Installments of fixed-fee.* Ninety percent (90%) of the fixed-fee shall become due and payable in periodic installments in amounts based on the proportion of the work then completed, as determined by the contracting officer, and the balance upon completion and acceptance of all work under this contract.

NOTE 1: *Where a separate fixed-fee is provided for a separate item of work, this subparagraph should be modified to permit payment of the entire fixed-fee upon completion of that item.*

NOTE 2: When award-fee provisions are used, the clause should be modified by replacing subparagraph (a) with the following:

(a) Payment of Base Fee and Award Fee. The base fee shall become due and payable in equal monthly installments on the last day of each month. Award fees earned shall become due and payable following the issuance by the government Fee Determination Official (FDO) of a Determination of Award Fee Earned, in accordance with the clause of this contract entitled Award Fee.

(b) *Payments on Account of Allowable Costs.* The contracting officer and the contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the contracting officer shall be made from advances of Government funds. When pension contributions are paid by the contractor to the retirement fund less frequently than quarterly, accrued costs therefor shall be excluded from costs for payment purposes until such costs are paid. If pension contribution are paid on a quarterly or more frequent basis, accrual therefor may be included in costs for payment purposes, provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from cost for payment purposes until payment has been made.

(c) *Special bank account—use.* All advances of Government funds shall be withdrawn pursuant to a letter of credit in favor of the bank or, in the option of the Government, shall be made by check payable to the contractor, and shall be deposited only in the Special Bank Account referred to in the Agreement for Special Bank Account, which is attached hereto and incorporated into this contract as an appendix. The contractor shall likewise deposit in the Special Bank Account any other revenues received by the contractor in connection with the work under this contract. No part of the funds in the Special Bank Account shall be (1) mingled with any funds of the contractor or (2) used for a purpose other than that of making payments for costs allowable under this contract or payments for other items specifically approved in writing by the contracting officer. If the contracting officer shall at any time determine that the balance on such bank account exceeds the contractor's current needs, the contractor shall promptly make such disposition of the excess as the contracting officer may direct.

(d) *Title to funds advanced.* Title to the unexpended balance of any funds advanced and of any bank account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the bank of deposit or others. It is understood that an advance to the contractor hereunder is not a loan to the contractor, and will not require the payment of interest by the contractor, and that the contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.

NOTE 3: The following paragraph (e) shall be included in management and operating contracts with integrated contractors.

(e) *Review and approval of costs incurred.* The contractor shall prepare and submit annually as of September 30, a voucher for the total of net expenditures accrued (i.e., net costs incurred) for the period covered by the voucher, and DOE, after audit and appropriate adjustment, will approve such voucher. This approval by DOE will constitute an acknowledgment by DOE that the net costs incurred are allowable under the contract and that they have been recorded in the accounts maintained by the contractor in accordance with DOE accounting policies, but will not relieve the contractor of responsibility for DOE's assets in its care, for appropriate subsequent adjustments, or for errors later becoming known to DOE.

NOTE 4: *It should be omitted in contracts with nonintegrated contractors.*

(f) *Financial settlement.* The Government shall promptly pay to the contractor the unpaid balance of allowable costs and fixed fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after (1) compliance by the contractor with DOE's patent clearance requirements, and (2) the furnishing by the contractor of:

(i) An assignment of the contractor's rights to any refunds, rebates, allowances, accounts receivable, or other credits applicable to allowable costs under the contract;

(ii) A closing financial statement;

(iii) The accounting for Government-owned property required by the clause entitled "Property;" and

(iv) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions:

(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the contractor;

(B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the contractor on the date of the execution of the release; and provided further that the contractor gives notice of such claims in writing to the contracting officer promptly, but not more than one (1) year after the contractor's right of action first accrues. In addition, the contractor should provide prompt notice to the contracting officer of all potential claims under this clause, whether in litigation or not (see also Contract Clause———, DEAR 970.5204-31, "Litigation and Claims"); and

(C) Claims for reimbursement of costs (other than expenses of the contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the contractor under the provisions of this contract relating to patents.

In arriving at the amount due the contractor under this clause, there shall be deducted, any claim which the Government may have against the contractor in connection with this contract, and deductions due under the terms of this contract, and not otherwise recovered by or credited to the Government. The unliquidated balance of the Special Bank Account may be applied to the amount due and any balance shall be returned to the Government forthwith.

(g) *Claims.* Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the contracting officer shall prescribe.

(h) *Discounts.* The contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebates, allowances, credits, salvage, and commissions unless the contracting officer finds that action is not in the best interest of the Government.

(i) *Revenues.* All revenues other than the contractor's fixed fee or fees, if any, accruing to the contractor in connection with the work under this contract shall be Government property and shall be deposited in the Special Bank Account to be available for payment of allowable cost under this contract.

(j) *Direct payment of charges.* The Government reserves the right, upon ten days written notice from the contracting officer to the contractor, to pay directly to the persons concerned, all amounts due which otherwise would be allowable under this contract. Any payment so made shall discharge the Government of all liability to the contractor therefor.

[49 FR 12063, Mar. 28, 1984, as amended at 54 FR 48614, Nov. 24, 1989; 55 FR 31053, July 31, 1990]

970.5204-17 Legislative lobbying cost prohibition.

LEGISLATIVE LOBBYING COST PROHIBITION (JUNE 1988)

(a) Pursuant to the allowable cost provisions established elsewhere under the contract, costs associated with the following activities are not reimbursable under the contract:

(1) Attempts to influence the outcome of any Federal, State, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activities;

(2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;

(3) Any attempt to influence (i) the introduction of Federal or State legislation, or (ii) the enactment or modification of any pending Federal or State legislation through communication with any member or employee of the Congress or State legislature (including efforts to influence state or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto enrolled legislation;

(4) Any attempt to influence (i) the introduction of Federal or State legislation, or (ii) the enactment or modification of any pending Federal or State legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or

(5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable activities.

(b) Costs of the following activities are excepted from the coverage of paragraph (a) of this clause; provided that the resultant contract costs are reasonable and otherwise comply with the allowable cost provisions of the contract:

(1) Providing Members of Congress, State legislatures or subdivisions thereof, or their staff members or staff of cognizant legislative committees, in response to a request (written or oral, prior or contemporaneous, including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) from Members of Congress, State legislatures or subdivisions thereof, or their staff members or staff of cognizant legislative committees, information or expert advice of a factual, techncial, or scientific nature, with respect to topics directly related to the performance of the contract or proposed legislation. Reasonable costs for transportation, lodging, or meals incurred by contractor employees for the purpose of providing such information or advice shall also be reimbursable; provided such costs also comply with the allowable cost provisions of the contract.

(2) Any lobbying made unallowable under paragraph (a)(3) of this clause to influence State legislation in order to directly reduce contract cost, or to avoid material impairment of the contractor's authority to perform the contract if authorized by the Contracting Officer.

(3) Any activity specifically authorized by statute to be undertaken with funds from the contract.

(c) Unallowable lobbying costs incurred, if any, shall not be charged to DOE, paid for with DOE funds or recorded as allowable cost in DOE's system of accounts.

(d) The contractor's annual certification, submitted as part of its annual claim (i.e., Voucher Accounting for Net Expenditures Accrued required under the clause titled "Payments and Advances") or cost incurred statement, that the costs claimed are allowable under the contract, shall also serve as the contractor's certification that the requirements and standards of this clause have been complied with.

(e) The contractor shall maintain adequate records to demonstrate that the annual certifications of claimed costs as being allowable comply with the requirements of this clause.

(f) Time logs, calendars, or similar records shall not be created for purposes of complying with this clause during any particular calendar month when: (1) An employee engages in legislative liaison activities (as delineated in paragraphs (a) and (b) of this clause) 25 percent or less of the employees's compensated hours of employment during that calendar month, and (2) within the preceding five-year period, the contractor has not materially misstated allowable or unallowable costs of any nature, including legislative liaison costs. When conditions (f)(1) and (2) of this clause are met, the contractor is not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions (f) (1) and (2) of this clause are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of legislative liaison activity time spent by employees during any calendar month.

(g) During contract performance, the contractor should resolve, in advance, any significant questions or disagreements between the contractor and DOE concerning compliance with this clause.

[53 FR 21649, June 9, 1988; 53 FR 24830, June 30, 1988]

970.5204-18 [Reserved]

970.5204-19 Printing clause for management and operating contracts.

PRINTING (APR 1984)

(a) To the extent that duplicating or printing services may be required in the performance of this contract, the Contractor shall provide or secure such services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.

(b) The term "Printing" includes the following processes: composition, platemaking, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single page, or no more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.

(c) Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed.

(d) In all subcontracts hereunder which require printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations), the Contractor shall include a provision substantially the same as this clause.

970.5204-20 [Reserved]

970.5204-21 Property.

Property (Apr 1984)

(a) *Furnishing of Government property.* The Government reserves the right to furnish any property or services required for the performance of the work under this contract.

(b) *Title to property.* Except as otherwise provided by the contracting officer, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the contractor, for the cost of which the contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass directly from the vendor to the Government. The Government reserves the right to inspect, and to accept or reject, any item of such property. The contractor shall make such disposition of rejected items as the contracting officer shall direct. Title to other property, the cost of which is reimbursable to the contractor under this contract, shall pass to and vest in the Government upon (1) issuance for use of such property in the performance of this contract, or (2) commencement of processing or use of such property in the performance of this contract, or (3) reimbursement of the cost thereof by the Government, whichever first occurs. Property furnished by the Government and property purchased or furnished by the contractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(c) *Identification.* To the extent directed by the contracting officer, the contractor shall identify Government property coming into the contractor's possession or custody, by marking and segregating in such a way, satisfactory to the contracting officer, as shall indicate its ownership by the Government.

(d) *Disposition.* The contractor shall make such disposition of Government property which has come into the possession or custody of the contractor under this contract as the contracting officer may direct during the progress of the work or upon completion or termination of this contract. The contractor may, upon such terms and conditions as the contracting officer may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the Contracting Officer and the contractor as the fair value thereof. The amount received by the contractor as the result of any disposition, or the agreed fair value of any such property acquired by the contractor, shall be applied in reduction of costs allowable under this contract or shall be otherwise credited to account to the Government, as the contracting officer may direct. Upon completion of the work or the termination of this contract, the contractor shall render an accounting, as prescribed by the contracting officer, of all government property which had come into the possession or custody of the contractor under this contract.

(e) *Protection of government property—Classified Materials.* The contractor shall take all reasonable precautions, as directed by the contracting officer, or in the absence of such direction in accordance with sound industrial practice, to safeguard and protect government property in the contractor's possession or custody. Special measures shall be taken by the contractor in the protection of and accounting for any classified or special materials involved in the performance of this contract, in accordance with the regulations and requirements of DOE.

(f) *Risk of loss of government property.* The contractor shall not be liable for loss or destruction of or damage to government property in the contractor's possession unless such loss, destruction or damage results from willful misconduct or lack of good faith on the part of the contractor's managerial personnel, or unless such loss, destruction or damage results from a failure on the part of the contractor's managerial personnel to take all reasonable steps to comply with any appropriate written directive of the contracting officer to safeguard such property under paragraph (e) hereof. The term "contractor's managerial personnel" as used herein means the contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of (1) all or substantially all of the contractor's business; or (2) all or substantially all of the contractor's operation at any one plant or separate location at which this contract is being performed; or (3) a separate and complete major industrial operation in connection with the performance of this contract; or (4) a separate and complete major construction, alteration or repair operation in connection with performance of this contract.

(g) *Steps to be taken in event of loss.* Upon the happening of any loss or destruction of or damage to government property in the possession or custody of the contractor, the contractor shall immediately inform the contracting officer of the occasion and extent thereof, shall take all reasonable steps to protect the property remaining, and shall repair or replace the lost, destroyed, or damaged property, if and as directed by the contracting officer, but shall take no action prejudicial to the right of the Government to recover therefor and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.

(h) *Government property for Government use only.* Government property shall be used only for the performance of this contract.

(i) *Property Management.* The contractor shall maintain and administer a property management system, subject to the approval of the contracting officer, of accounting for and control, utilization, maintenance, repair, protection and preservation of Government property in its possession under the contract. The contractor's property management system shall be maintained and administered in accordance with sound business practice, and in accordance with Department of Energy Property Management Regulations and such directives or instructions which the contracting officer may from time to time prescribe.

[49 FR 12063, Mar. 28, 1984; 49 FR 38953, Oct. 2, 1984]

970.5204-22 Contractor purchasing system.

CONTRACTOR PURCHASING SYSTEM (JUNE 1988)

(a) (Name of contractor) shall develop and implement formal policies, practices, and procedures to be used in the award of subcontracts, which purchasing system and methods shall be fully documented and acceptable to DOE, in accordance with the policies set forth in DEAR 970.71. DOE reserves the right at any time to require that the contractor submit for approval any or all purchases under this contract. The contractor shall not purchase any item or service the purchase of which is expressly prohibited by the written direction of DOE and shall use such special and directed sources as may be expressly required by the DOE contracting officer.

(b) The obligations of (*name of contractor*) under paragraph (a) of this clause, including the development of the purchasing system and methods, and purchases made pursuant thereto, shall not relieve the contractor of any obligation under this contract (including, among other things, the obligation to properly supervise, administer, and coordinate the work of subcontractors). Subcontracts shall be in the name of the contractor, and shall not bind or purport to bind the Government.

(c) In addition to, and without derogation of any rights under paragraph (a) of this clause and any other provision in this contract, (*name of contractor*) shall require all subcontractors to furnish cost or pricing data under those conditions and in accordance with the requirements set forth in FAR 15.804, and shall include in such subcontracts the appropriate clause set forth in 970.5204-24 except as otherwise directed or approved by DOE.

(d) Purchase or transfer of equipment, materials, supplies, or services from a contractor-affiliated source shall be treated in accordance with DEAR 970.7105.

(e) Proposed awards to firms or individuals on either the GSA Consolidated List of Debarred, Suspended, and Ineligible Contractors or the DOE Consolidated List of Debarred, Suspended, Ineligible, and Voluntarily Excluded Awardees shall be forwarded to DOE for approval notwithstanding any prior purchasing system acceptance.

(f) (*Name of Contractor*) shall provide advance notice of proposed subcontract awards in accordance with DEAR 970.7109; shall document purchases in writing; and shall establish and maintain subcontract files which present an accurate and adequate record of all purchasing transactions.

[53 FR 24231, June 27, 1988; 54 FR 1288, Jan. 12, 1989]

970.5204-23 Taxes.

STATE AND LOCAL TAXES (APR 1984)

(a) The contractor agrees to notify the contracting officer of any State or local tax, fee, or charge levied or purported to be levied on or collected from the contractor with respect to the contract work, any transaction thereunder, or property in the custody or control of the contractor and constituting an allowable item of cost if due and payable, but which the contractor has reason to believe, or the contracting officer has advised the contractor, is or may be inapplicable or invalid;* and the contractor further agrees to refrain from paying any such tax, fee, or charge unless authorized in writing by the Contracting Officer. Any State or local tax, fee, or charge paid with the approval of the contracting officer or on the basis of advice from the contracting officer that such tax, fee, or charge is applicable and valid, and which would otherwise be an allowable item of cost, shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was in fact inapplicable or invalid.

**Requirement for notice may be broadened to include all State and local taxes which may be claimed as allowable costs when considered to be appropriate.*

(b) The contractor agrees to take such action as may be required or approved by the contracting officer to cause any State or local tax, fee, or charge which would be an allowable cost to be paid under protest; and to take such action as may be required or approved by the contracting officer to seek recovery of any payments made, including assignment to the Government or its designee of all rights to an abatement or refund thereof, and granting permission for the Government to join with the contractor in any proceedings for the recovery thereof or to sue for recovery in the name of the contractor. If the contracting officer directs the contractor to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against the contractor for a tax, fee, or charge it has refrained from paying in accordance with this article, the procedures and requirements of the article entitled "Litigation and Claims" shall apply and the costs and expenses incurred by the contractor shall be allowable items of costs, as provided in this contract, together with the amount of any judgment rendered against the contractor.

(c) The Government shall hold the contractor harmless from penalties and interest incurred through compliance with this clause. All recoveries or credits in respect of the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of the Government.

970.5204-24 Subcontractor cost or pricing data.

SUBCONTRACTOR COST OR PRICING DATA (APR 1984)

(a) The following clause shall be inserted in all subcontracts where such subcontracts are over $100,000 and any modification over $100,000 to such subcontracts, even though the original amount of the subcontract is $100,000 or less:

CERTIFIED COST OR PRICING DATA (APR 1984)

(a)(1) The subcontractor shall require under the situations described in (2) below, unless exempted under the exceptions set forth in (3) below, each sub-subcontractor under this subcontract to submit cost or pricing data and to certify that, to the best of his knowledge and belief, such cost or pricing data are accurate, complete and current.

(2) Except as provided in (3) below, certified cost or pricing data shall be submitted prior to (i) the award of each sub-subcontract, the price of which is expected to exceed $100,000, and (ii) the negotiation of the price of each change or modification to a sub-subcontract under this subcontract for which the price adjustment is expected to exceed $100,000.

(3) Certified cost or pricing data need not be furnished pursuant to this paragraph (a) where (i) the subcontractor has not been required to furnish cost or pricing data; or (ii) the price adjustment is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or the prices are set by law or regulation; and the subcontractor states in writing the basis for applying this exception.

(4) In submitting the cost or pricing data, the sub-subcontractor shall use the form of certificate set forth in paragraph (b) of this section and shall certify that the data are accurate, complete, and current. Such certificate and data (actual or identified, as provided in the certificate prescribed below) shall be submitted by sub-subcontractors to the next higher-tier sub-subcontractor or the subcontractor, as applicable, for retention.

(b) The certificates required by this clause shall be in the form set forth below.

Subcontractor's Certificate of Current Cost or Pricing Data

This is to certify that, to the best of my knowledge and belief, cost or pricing data submitted in writing, or specifically identified in writing if actual submission of the data is impracticable (see FAR 15.804-6(d)), to the contractor in support of ———* are accurate, complete, and current as of ———**.

Firm ———
Name ———
Title ———
Date of execution*** ———

*Identify the proposal, quotation, request for price adjustment, or other submission involved.

**Insert the day, month, and year when price negotiations were concluded and price agreement was reached.

***Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

(c) For purposes of verifying that certified cost or pricing data submitted in conjunction with the negotiation of this subcontract change or other modification involving an amount in excess of $100,000 were accurate, complete, and current, DOE shall, until the expiration of 3 years from the date of final payment under this subcontract, have the right to examine those books, records, documents, papers, and other supporting data which involve transactions related to this subcontract or which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

(d) If the original price of this subcontract exceeds $100,000 or the price of any change or other modification to this subcontract is expected to exceed $100,000, the subcontractor agrees to furnish the contractor certified cost or pricing data, using the certificate set forth in paragraph (b) above, unless the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(e) The requirement for submission of certified cost or pricing data with respect to any change or other modification does not apply to any sub-subcontract change or other modification, at any tier, where the subcontract is firm fixed-price or fixed-price with escalation unless such change or other modification result from a change or modification to the subcontract, nor does it apply to a sub-subcontract change or modification, at any tier, where the subcontract is not firm fixed-price or fixed-price with escalation unless the price for such change or other modification becomes reimbursable under the subcontract.

(f) The subcontractor agrees to insert paragraph (c) without change and the substance of paragraphs (a), (b), (d), (e), and (f) of this clause in each sub-subcontract hereunder in excess of $100,000 and in each sub-subcontract of $100,000 or less, at the time of making a change or other modification thereto in excess of $100,000.

(g) If the prime contractor determines that any price, including profit or fee, negotiated in connection with this subcontract or any cost reimbursable under this subcontract was increased by any significant sums because the subcontractor, or any sub-subcontractor pursuant to this clause or any sub-subcontract clause herein required, furnished incomplete or inaccurate cost or pricing data or data not current as certified in the subcontractor's certificate of current cost or pricing data, then such price or cost shall be reduced accordingly and the contract shall be modified in writing to reflect such reduction.

(h) Failure of the contractor and the subcontractor to agree on any of the matters in paragraph (g) of this section shall be a dispute concerning a question of fact subject to the Disputes provisions of this subcontract.

NOTE: *Since the subcontract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain sub-subcontracts, it is expected that the subcontractor may wish to include a clause in each such sub-subcontract requiring the sub-subcontractor to appropriately indemnify the subcontractor. It is also expected that any sub-subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by its lower-tier sub-subcontractors.*

(b) This clause may also be used for subcontracts of $100,000 or less for which a certificate of cost or pricing data is obtained and, if so used, the $100,000 amount stated in the clause should be appropriately modified.

(c) The Head of a Contracting Activity, for contracts estimated to be within the limits of delegated authority, may, without power of redelegation, approve the waiver cited in FAR 15.804-3(i).

[49 FR 12063, Mar. 28, 1984; 49 FR 38953, Oct. 2, 1984, as amended at 50 FR 12185, Mar. 27, 1985]

970.5204-25 Workmanship and materials.

WORKMANSHIP AND MATERIALS (APR 1984)

(a) *Grade of workmanship and materials.* Unless otherwise directed by the contracting officer or expressly provided for by specifications issued under this contract:

(1) All workmanship shall be first class; and

(2) All articles, equipment and materials incorporated in the work are to be:

(i) New and of the most suitable grade of their respective kinds for the purpose;

(ii) In accordance with any applicable drawings and specifications; and

(iii) Installed to the satisfaction and with the approval of the contracting officer.

Where equipment, materials, or articles are referred to in the specifications as "equal to" any particular standard, the contracting officer shall decide the question of equality.

(b) *Samples and test results.* If the contracting officer so requires, the contractor shall submit for approval samples of or test results on any materials proposed to be incorporated in the work before making any commitment for the purchase of such materials.

970.5204-26 Nuclear facility safety.

In accordance with the provisions at 970.2303 insert the clause below in management and operating contracts.

NUCLEAR SAFETY (APR 1984)

(a) The activities under this contract include the operation of nuclear facilities. The contractor recognizes that such operation involves the risk of a nuclear incident which, while the chances are remote, could adversely affect the public health and safety as well as the environment. Therefore, the contractor will exercise a degree of care commensurate with the risk involved.

(b) The contractor shall comply with all applicable regulations of DOE concerning nuclear safety and with those requirements (including reporting requirements and instructions) of DOE concerning nuclear safety of which it is notified in writing by the contracting officer.

(c) Prior to the initial startup of any nuclear facility under this contract and prior to any subsequent startup following a change which represents a significant deviation from the procedures, equipment, or analyses described in the safety analysis reports or other hazards summary reports for that facility, the contractor shall:

(1) Prepare a safety analysis report and detailed plans and procedures designed to assure the safe operations and maintenance of the facility in accordance with applicable DOE regulations and directives. For nuclear reactors and critical facilities, technical specifications shall also be provided.

(2) Establish nuclear safety control procedures to be used within the contractor's organization to insure competent independent review and internal approval of the safety analysis report and the detailed plans and procedures specified in (1) above.

(3) Submit to the contracting officer for his approval such procedures relating to nuclear safety as may be designated by him.

(4) Carry out a program of initial training and periodic requalification designed to assure that all personnel who will be engaged in nuclear operations or maintenance understand the approved plans and procedures for nuclear safety and are qualified to perform their assigned functions; and

(5) Obtain the approval of the contracting officer prior to start-up of the facility.

(d) In the operation and maintenance of any nuclear facility under this contract, the contractor shall:

(1) Use all reasonable efforts to assure that all operational and maintenance activities are performed by qualified and adequately trained personnel, and except as otherwise agreed in writing, are conducted under the supervision of personnel who are qualified and authorized to evaluate any emergency condition and take prompt effective action with respect thereto.

(2) Operate the facility within the technical specifications or operational safety requirements which are approved by the contracting officer.

(3) Follow strictly the procedures relating to nuclear safety approved by the contracting officer in paragraph (c)(3) of this section, and submit to the contracting officer for his approval, any proposed changes in such procedures.

(4) Establish an auditable, well-defined, internal safety review and inspection system approved by the contracting officer (including review and inspection reports by competent technical personnel) that will: (i) Provide frequent and periodic checks of facility performance and of the qualifications and training of operating and maintenance personnel, and (ii) provide for investigation of any unusual or unpredicted conditions that might affect safe operation.

(5) Report promptly to the contracting officer any change in the physical condition of the facility or its operating characteristics that might, in the judgment of the contractor, affect the safe operation of the facility.

(6) Terminate operations at the facility immediately whenever so instructed by the contracting officer, or whenever, in the judgment of the contractor, the risk of a nuclear incident endangering persons or property warrants such action.

(7) Prepare, in cooperation with other services and facilities available at the site and with the approval of the contracting officer, a plan for minimizing the effects of a nuclear incident upon the health and safety of all persons of the site; participate as directed in the integration of the contractor's and contracting officer's emergency plans with the responsible state and local government's emergency plans for protection of the public off-site; instruct its personnel as to their participation in such plans and any personal risk to such personnel that may be involved; and participate in such practice exercises as may be desirable to assure the effectiveness of such plans.

(8) At an appropriate time as determined by the contracting officer, prepare and submit to the contracting officer for his approval, shutdown, decommissioning, decontamination and property management plans leading to orderly and safe program disposition of the nuclear facility and any associated nuclear wastes or other hazardous material.

(9) In the event that the contractor fails to comply with said standards and requirements of DOE, the contracting officer may, without prejudice to any other legal or contractual rights of DOE, issue an order stopping all or any part of the work; thereafter a start order for resumption of the work may be issued at the discretion of the contracting officer. The contractor shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.

970.5204-27 Consultant or other comparable employment services of contractor employees.

(a) The following clause shall be included in all cost-reimbursement type contracts identified in 970.2272(b)(3).

CONSULTANT OR OTHER COMPARABLE EMPLOYMENT SERVICES (APR 1984)

The contractor shall require all employees who are employed full-time (an individual who performs work under the cost-type contract on a full-time annual basis) or part-time (50 percent or more of regular annual compensation received under terms of a contract with DOE) on the contract work to disclose to the contractor all consultant or other comparable employment services which the employees propose to undertake for others. The contractor shall transmit to the contracting officer all information obtained from such disclosures. The contractor will require any employee who will be employed full-time on the contract o agree, as a condition of his participation in such work, that he will not perform consultant or other comparable employment services for another DOE contractor under its contract with DOE, except with the prior approval of the contractor.

(b) The following clause shall be included in all contracts identified in 970.2272(b)(4).

CONSULTANT OR OTHER COMPARABLE EMPLOYMENT SERVICES (MAY 1989)

The contractor shall require all employees who are employed full-time (an individual who performs work under the cost-type contract on a full-time annual basis) or part-time (50 percent or more of regular annual compensation received under terms of a contract with DOE) on the contract work to disclose to the contractor all consultant or other comparable employment services which the employees propose to undertake for others. The contractor shall transmit to the contracting officer all information obtained from such disclosures. The contractor will require any employee who will be employed full-time on the contract work to agree, as a condition of his participation in such work, that he will not perform consultant or other comparable employment services for another DOE contractor in the same or related energy field or another organization except with the prior approval of the contractor. If the contractor believes, with respect to any employee who is employed full-time on the contract work, that any proposed consultant or other comparable employment service may involve: (1) A rate of remuneration significantly in excess of the employee's regular rate of remuneration; (2) a significant question concerning possible conflict with DOE's policies regarding conduct of employees of DOE's contractors; (3) the contractor's responsibility to report fully and promptly to DOE all significant research and development information; or (4) the patent provisions of the contractor's contract with DOE, the contractor shall obtain the prior approval of the contracting officer for such consultant or other comparable employment service.

[49 FR 12063, Mar. 28, 1984; 49 FR 38953, Oct. 2, 1984; 54 FR 27649, June 30, 1989]

970.5204-28 Assignment.

ASSIGNMENT (APR 1984)

Neither this contract nor any interest therein nor claim thereunder shall be assigned or transferred by the contractor except as expressly authorized in writing by the contracting officer.

970.5204-29 Permits or licenses.

PERMITS OR LICENSES (APR 1984)

Except as otherwise directed by the contracting officer, the contractor shall procure all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the state, territory, and political subdivision in which the work under this contract is performed.

970.5204-30 Notice of labor disputes.

NOTICE OF LABOR DISPUTES (APR 1984)

Whenever an actual or potential labor dispute is delaying or threatening the performance of the work, the contractor shall immediately notify the contracting officer in writing. Such notice shall include all relevant information concerning the dispute and its background.

970.5204-31 Litigation and claims.

LITIGATION AND CLAIMS (APR 1984)

(a) *Initiation of litigation.* The contractor may, with the prior written authorization of the contracting officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The contractor shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.

(b) *Defense and settlement of claims.* The contractor shall give the contracting officer immediate notice in writing (1) of any action, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract, and (2) of any claim against the contractor, the cost and expense of which is allowable under the clause entitled "Allowable Costs and Fixed-Fee." Except as otherwise directed by the contracting officer, in writing, the contractor shall furnish immediately to the contracting officer copies of all pertinent papers received by the contractor with respect to such action or claim. To the extent not in conflict with any applicable policy of insurance, the contractor may with the contracting officer's approval, settle any such action or claim, shall effect at the contracting officer's request an assignment and subrogation in favor of the Government or all of the contractor's rights and claims (except those against the Government) arising out of such action or claim against the contractor, and if required by the contracting officer, shall authorize representatives of the Government to settle or defend any such action or claim and to represent the contractor in, or to take charge of, any action. If the settlement or defense of an action or claim against the contractor is undertaken by the Government, the contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the contractor is not covered by a policy of insurance, the contractor shall, with the approval of the contracting officer, proceed with the defense of the action in good faith and in such event the defense of the action shall be at the expense of the Government, provided, however, that the Government shall not be liable for such expense to the extent that it would have been compensated for by insurance which was required by law or by the written direction of the contracting officer, but which the contractor failed to secure or maintain through its own fault or negligence.

[49 FR 12063, Mar. 28, 1984; 49 FR 38953, Oct. 2, 1984]

970.5204-32 Required bonds and insurance-exclusive of Government property (cost-type contracts).

REQUIRED BONDS AND INSURANCE—EXCLUSIVE OF GOVERNMENT PROPERTY (COST-TYPE CONTRACTS) (APR 1984)

The contractor shall procure and maintain such bonds and insurance as are required by law or by the written direction of the contracting officer. The terms and conditions of any such bonds and insurance shall conform to the directions of the contracting officer. In view of the provisions of the article entitled "Property" the contractor shall not procure or maintain for its own protection any insurance covering loss or destruction of or damage to Government-owned property.

970.5204-33 Priorities and allocations.

(a) The following clause shall be used in management and operating contracts for military and atomic energy construction, operations and other directly related activity, where the programs have been authorized pursuant to the Atomic Energy Act of 1954, as amended.

PRIORITIES AND ALLOCATIONS (JUNE 1987)

The contractor shall follow the rules and procedures of the Defense Priorities and Allocations System (DPAS) regulation (15 CFR Part 350) in obtaining controlled materials and other products and materials needed for contract performance.

(b) The following clause shall be used in management and operating contracts in support of programs and projects which may be determined to maximize domestic energy supplies.

PRIORITIES AND ALLOCATIONS—DOMESTIC ENERGY SUPPLIES (JUNE 1987)

A program or project under this contract may be determined to be eligible for priorities and allocations support as provided for by section 101(c) of the Defense Production Act of 1950, as amended by the Energy Policy and Conservation Act (Pub. L. 94-163, 42 U.S.C. 6201 *et seq.*) if it is determined that its purpose is to maximize domestic energy supplies. Eligibility is dependent on an executive decision on a case-by-case basis with the decison being jointly made by the Department of Energy and Commerce.

DOE regulations regarding material allocation and priority performance under contracts or orders to maximize domestic energy supplies can be found at Part 216 of Title 10 of the Code of Federal Regulations (10 CFR Part 216).

Additional guidance is provided by DOE Publication MA-0192, "Priorities and Allocations Support for Energy: Keeping Energy Programs on Schedule," dated August 1985, as it may from time to time be revised. Copies may be obtained by written request to: Department of Energy, Office of Scientific and Technical Information (OSTI), Post Office Box 62, Oak Ridge, Tennessee 37830.

[52 FR 38426, Oct. 16, 1987]

970.5204-34 Sensitive foreign nations control.

See 952.204-71.

970.5204-35 Controls in the national interest (unclassified contracts with educational institutions).

CONTROLS IN THE NATIONAL INTEREST (APR 1984)

The contractor agrees to comply with the requirements of DOE specified in Attachment ———— to this contract, and to such other DOE requirements of the same general nature as the parties may agree to from time to time; these requirements relate to unclassified work, and they shall not be construed to limit or affect in any way the contractor's obligation to conform to all security regulations and requirements of DOE pertaining to classified work.

970.5204-36 Organizational conflicts of interest (contracts with universities where DOE has major investments in facilities but does not own or lease the land).

ORGANIZATIONAL CONFLICTS OF INTEREST (APR 1984)

The parties agree that the university has adopted policies and procedures, designed to avoid conflict-of-interest situations, which are in substantial conformance with the Joint Statement of the Council of American Association of University Professors and the American Council on Education of December 1964, entitled, "On Preventing Conflicts of Interest in Government-Sponsored Research at Universities," which policies and procedures will be applied in connection with this contract.

970.5204-37 Statement of work (management and operating contracts).

See 970.10.

970.5204-38 Special clause for procurement of construction.

In accordance with 970.2273 the following clause shall be used in operating and management contracts when the contractor is to perform no Davis-Bacon work with his own forces but may procure construction by subcontract:

GOVERNMENT FACILITY SUBCONTRACT APPROVAL (APR 1984)

Upon request of the contracting officer and acceptance thereof by the contractor, the contractor shall procure, by subcontract, the construction of new facilities or the alteration or repair of Government-owned facilities at the plant. Any subcontract entered into under this paragraph shall be subject to the written approval of the contracting officer and shall contain the provisions relative to labor and wages required by law to be included in contracts for the construction, alteration, and/or repair, including painting and decorating, on a public building or public work.

[49 FR 12063, Mar. 28, 1984; 49 FR 38953, Oct. 2, 1984]

970.5204-39—970.5204-40 [Reserved]

970.5204-41 Preservation of individual occupational radiation exposure records.

See 952.223-75.

970.5204-42 Key personnel.

KEY PERSONNEL (APR 1984)

It having been determined that the employees whose names appear (below or in Appendix ——), or persons approved by the contracting officer as persons of substantially equal abilities and qualifications, are necessary for the successful performance of this contract, the contractor agrees to assign such employees or persons to the performance of the work under this contract and shall not reassign or remove any of them without the consent of the contracting officer. Whenever, for any reason, one or more of the aforementioned employees is unavailable for assignment for work under the contract, the contractor shall, with the approval of the contracting officer, replace such employee with an employee of substantially equal abilities and qualifications.

970.5204-43 Other Government contractors.

OTHER GOVERNMENT CONTRACTORS (APR 1984)

The Government may undertake or award contracts for work or services. The contractor agrees to fully cooperate with such other contractors and Government employees and carefully fit its own work to such other work as may be directed by the contracting officer. The contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Government employees.

970.5204-44 [Reserved]

970.5204-45 Termination.

The following clause is suggested for use in management and operating contracts:

TERMINATION (APR 1984)

(a) This contract shall continue until ——— unless sooner terminated in accordance with the provisions which follow:

(1) The performance of work under this contract may be terminated by the Government in whole, or from time to time in part, (i) whenever the contractor shall default in performance, and shall fail to cure the fault or failure within such period as the contracting officer may allow after receipt from the contracting officer or a notice specifying the fault or failure, or (ii) whenever, for any reason, the contracting officer shall determine any such termination is for the best interest of the Government. Termination of the work hereunder shall be effected by delivery of a notice of termination specifying

whether termination is for default of the contractor or for the convenience of the Government, the extent to which performance of work under the contract shall be terminated, and the date upon which such termination shall become effective. Any such termination shall be without prejudice to any claim which either party may have against the other. If, after notice of termination under the provisions of paragraph (a)(1)(i) of this section, it is determined for any reason that the contractor was not in default, such notice of default shall be deemed to have been issued pursuant to paragraph (a)(1)(ii) of this section, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(2) Upon receipt of notice of termination, in accordance with (1) above, the contractor shall, to the extent directed in writing by the contracting officer, discontinue the terminated work and the placing of orders for materials, facilities, supplies, and services in connection therewith, and shall proceed, if, and to the extent required by the contracting officer, to cancel promptly and settle with the approval of the contracting officer, existing orders, subcontracts, and commitments insofar as such orders, subcontracts, and commitments pertain to this contract.

(b) Upon the termination of this contract, full and complete settlement of all claims of the contractor and of DOE arising out of this contract shall be made as follows:

(1) The Government shall have the right in its discretion to assume sole responsibility for any or all obligations, commitments, and claims that the contractor may have undertaken or incurred, the cost of which are allowable in accordance with the provisions of this contract; and the contractor shall, as a condition of receiving the payments mentioned in this article, execute and deliver all such papers and; take all such steps as the contracting officer may require for the purpose of fully vesting in the Government any rights and benefits the contractor may have under or in connection with such obligations, commitments, or claims.

(2) The Government shall treat as allowable costs all expenditures made in accordance with and allowable under the clause entitled "Allowable Costs and Fixed Fee," not previously so allowed or otherwise credited for work performed prior to the effective date of termination, together with expenditures as may be incurred for a reasonable time thereafter with the approval of, or as directed by, the contracting officer.

(3) The Government shall treat as allowable costs, to the extent not included in paragraph (b)(2) of this section, the costs of settling and paying claims arising out of the termination of work under orders, subcontracts, and commitments as provided in paragraph (a)(2) of this section.

(4) The Government shall treat as allowable costs the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the termination of the contract and for the termination and settlement of orders and subcontracts thereunder, together with such further expenditures made by the contractor after the date of termination for the protection or disposition of Government property as are approved or required by the contracting officer; provided, however, that if the termination is for default of the contractor, there shall not be included any amount for preparation of the contractor's settlement proposal.

(5) If performance of work under this contract is terminated in whole by the Government, the fixed fee of the contractor shall be prorated to and including the effective date of such termination. In addition, if the termination is for the convenience of the Government, the contractor shall be paid a fixed fee in an amount to be agreed upon as compensation for its services in closing out the work under this contract after the effective date of such termination. The additional fixed fee is to be negotiated as soon as practicable after service of notice of termination, shall take into account the estimate of the cost of the services and managerial effort to be rendered under this clause after the effective date of termination, and shall be provided for in a supplement or amendment to this contract prior to final settlement hereunder. Pending agreement as to the amount of such fee, the contractor shall diligently proceed with the performance of the services required under this clause. No additional fee will be paid if the contract is terminated due to the default of the contractor. In the event of a partial termination by the Government, an equitable adjustment shall be made in the fixed fee if such termination results in a material decrease in the level of the contractor's management effort. Any failure to agree on the right to or the amount of any adjustment shall be deemed a dispute within the purview of the clause hereof entitled "Disputes."

(6) The obligation of the Government to make any of the payments required by this clause or any other provisions of this contract shall be subject to any unsettled claims in connection with this contract which the Government may have against the contractor.

(c) Prior to final settlement, the contractor shall furnish a release as required in the clause entitled "Payments and Advances" and account for Government-owned property as may be required by the contracting officer: provided, however, that unless the contracting officer requires an inventory, the maintenance and disposition of the records of Government-owned property in accordance with the clause entitled "Accounts, Records and Inspection" shall be accepted by the contracting officer as full compliance with all requirements of this contract pertaining to an accounting for such property.

970.5204-48 [Reserved]

970.5204-50 Cost and schedule control systems.

See 952.212-73.

970.5204-51 [Reserved]

970.5204-52 Foreign travel.

See 952.247-70.

970.5204-53 Contractor employee travel discounts.

Insert the contract clause at 952.251-70 when the circumstances described in 951.7002 apply.

[54 FR 17738, Apr. 25, 1989]

970.5204-54 Award fee.

AWARD FEE (NOV 1989)

(a) *Base Fee and Award Fee.* It is herewith agreed that a base fee and an award fee, to be determined in accordance with the provisions of this clause, are available for payment in accordance with the clause of this contract entitled Payments and Advances.

(b) *Fee Negotiations.* Prior to the beginning of each fiscal year under this contract, or other appropriate period as mutually agreed upon, the contracting officer and contractor shall enter into negotiation of a base and award fee in accordance with appropriate provisions for management and operating contract fees set forth in the Department of Energy Acquisition Regulation. This contract shall be modified at the conclusion of each negotiation to reflect the negotiated amounts for base and award fees. It is herein agreed the award fee amount shall be assigned to evaluation periods six months in duration. If the parties are unable to agree on a reasonable fee, the contracting officer shall determine the base and award fee unilaterally, in accordance with the clause of this contract entitled Disputes.

(c) *Determination of Award Fee Earned.* (1) The Government shall at the conclusion of each specified evaluation period evaluate the contractor's performance for a determination of award fee earned.

(2) For this contract, the Government Fee Determination Official (FDO) will be (Insert title of FDO). The contractor agrees that the determination as to the amount of award fee earned will be made by the Government FDO and such determination is binding on both parties and shall not be subject to appeal under the "Disputes" clause or any other appeal clause.

(3) The evaluation of contractor performance shall be in accordance with the Performance Evaluation Plan described in subparagraph (d), below. The contractor shall be promptly advised in writing of the determination, and the reasons why the award fee was or was not earned. While it is recognized that the basis for determination of the fee shall be the evaluation by the government, in accordance with the Performance Evaluation Plan, the FDO may also consider any information available to him or her which relates to the contractor's performance of contract requirements. In the event that the contractor's performance is considered unacceptable in any area of contract performance which is specified in the Performance Evaluation Plan, even if no weight or fee is specifically assigned to the particular performance area, the FDO may at his/her discretion determine the contractor's overall performance to be unacceptable, and accordingly may withhold the entire award fee for the evaluation period.

(4) Unearned award may be carried over within a single fiscal year, or other two-period fee negotiation cycle as may have been agreed upon. The FDO may, at their sole discretion, specify in a fee determination that award fee not earned during the first evaluation period of a two-period fee cycle may be allocated to the second fee period in that fee cycle. The contractor shall not, however, be entitled to earn any of this "carry-over" fee it its overall performance in the latter evaluation period does not reflect an improvement over the prior evaluation period. Overall performance evaluations in the second period which are equal to or the same as those in the first period shall not be considered as improvements providing entitlement to the carry-over portion of the award fee pool. If the single negotiation of a base and award fee amount (fee cycle) will be for more than two evaluation periods, unearned award fees in any one of the evaluation periods established by that negotiation may be carried over only to the next period covered by that negotiation. Fees unearned under one fee cycle may not be carried forward to another fee cycle.

(d) *Performance Evaluation Plan.* (1) The Government shall establish unilaterally a Performance Evaluation Plan upon which the determination of award fee shall be based. Such Plan shall include the criteria to be considered under each area evaluated and the percentage of award fee, if any, available for each area. A copy of the plan shall be provided to the contractor thirty (30) calendar days prior to the start of an evaluation period.

(2) The Performance Evaluation Plan will set forth the criteria upon which the contractor will be evaluated for performance relating to any technical, schedule, management, and/or cost functions selected for evaluation.

(3) The Performance Evaluation Plan may, consistent with the contract statement of work, be revised unilaterally by the Government at any time during the period of performance. Notification of such changes shall be provided to the contractor at least thirty (30) calendar days prior to the start of the evaluation period to which the change will apply.

(e) *Contractor Self-Assessment.* Following each evaluation period, the contractor shall submit a self-assessment within (Insert Number) calendar days after the end of the period. This self-assessment shall address both the strengths and weaknesses of the contractor's performance during the evaluation period. Where deficiencies in performance are noted, the contractor shall describe the actions planned or taken to correct such deficiencies and avoid their recurrence. The FDO will review the contractor's self-assessment as part of their evaluation of the contractor's management during the period. An unrealistic self-assessment will result in lower award fee determinations. The contractor will not be penalized for a realistic self-assessment, although deficiencies noted by the contractor may be reflected in the Government's evaluation. The self-assessment itself will not be the basis for the award fee determination.

(f) *Schedule for Award Fee Determinations.* The FDO shall issue the final award fee determination in accordance with a schedule set forth in the Performance Evaluation Plan. However, a determination must be made within sixty (60) calendar days after the receipt by the contracting officer of the contractor's self-assessment discussed in paragraph (e), above. If the determination is delayed beyond that date, the contractor shall be entitled to interest on the determined award fee amount at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the payment date. This rate is referred to as the "Renegotiation Board Interest Rate," and is published in the FEDERAL REGISTER semiannually on or about January 1 and July 1. The interest on any late award fee determination amount will accrue daily and be compounded in 30-day increments inclusive from the first day after the scheduled determination date through the actual date the determination is issued. That is, interest accrued at the end of any 30-day period will be added to the determined amount of award fee and be subject to interest if not paid in the succeeding 30-day period.

[54 FR 48614, Nov. 24, 1989]

Subpart 970.70—Use of DOE Facilities for Work for Others

970.7000 Mission-oriented solicitation.

Contractors shall be required to promptly advise the DOE contracting officer of any advance notices of, or solicitations for, requirements which would logically involve DOE facilities or resources operated or managed by the contractor, received from other agencies pursuant to FAR 34.005. Management and operating contracts shall provide that the contractor shall not respond or otherwise propose to participate in response to the requirements of such solicitations unless the contractor shall have first obtained the written approval of the DOE manager of the field activity having cognizance over the contract. Such approval shall not be given except in compliance with DOE directives and with the concurrence of the appropriate Senior Program Official.

Subpart 970.71—Management and Operating Contractor Purchasing

SOURCE: 53 FR 24232, June 27, 1988, unless otherwise noted.

970.7101 General.

(a) The Department of Energy contracts for the management and operation of DOE facilities, the design and production of nuclear weapons, energy research and development, and the performance of other services. These management and operating (M&O) contractors have been selected for their technical and managerial expertise and are expected to bring to bear these technical and managerial skills to accomplish the significant Federal mission(s) described in their contracts with, and work plans approved by, DOE.

(b) Purchasing done by management and operating contractors is one area in which the particular skills of the contractors will be brought to bear in order to more readily accomplish the contractors' assigned missions. The contracting procedures of the contractor's organization, therefore, form the basis for the development of a purchasing system and methods that will comply with its contract with DOE and this subpart.

(c) Competition is fundamental to M&O contractor purchasing.

(d) The Federal Acquisition Regulation generally is not directly applicable to the purchasing activities of management and operating contractors. There are, however, certain Federal laws, Executive Orders and Federal and DOE regulations which do pertain to and apply to purchases by management and operating contractors and thus should be reflected in the contractor's purchasing system and methods. These requirements are identified in this subpart.

[53 FR 24232, June 27, 1988; 54 FR 1288, Jan. 12, 1989]

970.7102 DOE responsibility.

(a) In the Department of Energy, overall responsibility for the oversight of the performance of management and operating contractors, including their purchasing activities, rests with the cognizant DOE contracting activity and, in particular, the Head of Contracting Activity (HCA). Contracting officers are responsible for management and operating contractors' conformance with this subpart and their contracts, and for determining whether those purchasing activities provide timely and effective support to DOE programs. (For the purposes of this subpart, the term "Head of Contracting Activity" includes his or her duly authorized representative except for the HCA actions identified in 970.7104-8(a), 970.7104-9(b), 970.7104-22(c), 970.7104-28(f)(1), and 970.7108(a), which actions are nondelegable. Further, when the term "contracting officer" is used in this subpart, it refers to that individual who has been delegated authority by the HCA for the day-to-day oversight of a management and operating contractors' purchasing activities.)

(b) In carrying out their overall responsibilities, HCAs shall:

(1) Require management and operating contractors to maintain written descriptions of their individual purchasing system and methods and further require that, upon award or extension of the contract, the entire written description be submitted to the contracting officer for review and acceptance;

(2) Require that any changes to the management and operating contractor's written description having any substantive impact upon the contractor's purchasing system and methods be submitted to the contracting officer for review and acceptance prior to issuance;

(3) Ensure review of individual purchasing actions of certain types or above stated dollar levels by the contracting officer to assure that management and operating contractors implement DOE policies and requirements, as defined in this subpart, in accordance with the contractor's accepted system and methods; and

(4) Ensure that periodic appraisals (e.g. Contractor Purchasing System Review (CPSR) and Surveillance Review) of the contractor's management of all facets of the purchasing function are performed by the contracting officer in accordance with established policies. (See Subpart 944.3 and 970.7108).

(c) In performing the reviews required by paragraphs (b) (1) and (2) and the appraisals of paragraph (b)(4) of this section, HCAs shall assure that contracting officers determine that the contractors' written systems and methods are consistent with this subpart and the provisions of their contracts.

970.7103 Policies.

The following shall apply to the purchasing practices of management and operating contractors. Within these policies it is expected that purchasing systems and methods will vary according to the types and kinds of purchases to be made, the mission needs of the particular programs and facilities, and the experiences, methods, and practices of the contractor. In the development of their purchasing systems and methods, contractors are expected to use their experience, expertise, and initiative consistent with this subpart.

(a) The purchasing systems and methods used by management and operating contractors should be well defined, consistently applied, and should follow good business practices appropriate for the requirement and dollar amount of the purchase involved.

(b) Management and operating contractors' purchasing systems should produce the proper balance between the government's decision to use the experience and expertise of these contractors in managing and operating its programs and facilities and the objectives and the attendant requisites of the Federal acquisition process. In evaluating the proper balance between commercial purchasing practices and the requisites of the Federal acquisition process a concept referred to as the "Federal norm" has evolved. The Federal norm refers to those fundamental principles embodied in law and regulation that should be reflected in contractor purchases even though such purchases are not Federal procurements.

(c) DOE has identified the following specific tenets of Federal procurement policy that must be addressed in a contractor's purchasing system:

(1) Purchases must be effected in the manner that will be most advantageous in meeting the overall mission with price, quality, and timely and efficient performance of the contract considered.

(2) Although the Competition in Contracting Act of 1984 (Pub. L. 98-369) is not applicable to management and operating contractor purchases, the contractor's purchasing system and methods must ensure competitive subcontracting consistent with the contractor's efficient performance of the contractual mission and the nature of supplies and services purchased. The objective is to provide fair and effective competition through application of the principles set out in this section.

(3) The contractor's purchasing system and methods shall ensure that for purchases in excess of those discussed at 970.7103(b)(4) of this subpart, all competitors are treated fairly and equitably by:

(i) Describing the requirement as completely as possible and in adequate time to promote competition. [Supplies and services should be purchased through the use of specifications, standards or descriptions which clearly and accurately describe the supplies or services to be purchased];

(ii) Preparing solicitation documents setting forth the contract terms and conditions, describing the requirement clearly, accurately, and completely, but avoiding unnecessarily restrictive specifications or requirements;

(iii) Stating in the solicitation the factors that will comprise the basis for award, i.e., lowest evaluated price or a combination of price and technical merit. [In the event of the latter the solicitation shall state the importance of technical considerations versus cost considerations and note any criterion(ia) that is of significantly greater or lesser importance than other criterion];

(iv) Conducting evaluations and making awards in accordance with the stated factors and the descriptions of their importance;

(v) Publicizing the solicitation by (A) distribution to a reasonable number of prospective offerors and (B) use, as appropriate, of such means as plan rooms, journals, expressions of interest or other public notices, or the Commerce Business Daily particularly where there are not adequate numbers of qualified sources in the local area;

(vi) Providing equal access to solicitation data and information;

(vii) Offering sufficient numbers of qualified entities the opportunity to propose, and tailoring the method of carrying out the competition such that there is every expectation that proposals will be received in numbers that will substantiate that the cost or price is in the Government's best interest;

(viii) Allowing sufficient time for preparation and submission of proposals;

(ix) Providing for a uniform time for submission;

(x) Taking precautions to assure that the contents of each proposal are maintained in confidence to prevent technical transfusion and technical leveling;

(xi) Handling responses in a manner to assure fairness and impartiality.

and communicating, where necessary to clarify solicitations, with all firms that received a copy of the solicitation or, after the due date, all firms submitting a proposal;

(xii) Conducting negotiations, as appropriate, in such a way as to enhance competition and ensure the understanding of substantive aspects of the offerors' proposals. [A management and operating contractor's purchasing system and methods may provide for receipt of amended proposals following communication with a select group of offerors deemed most likely to receive the award in accordance with the expressed evaluation criteria; for award without communication; and for clarification of ambiguous portions of an offeror's proposal not as a part of negotiations];

(xiii) Awarding only to capable offerors whose offers conform to the solicitation. [Awards shall not be made to firms or individuals listed on the GSA Consolidated List of Debarred, Suspended, and Ineligible Contractors or the DOE List of Debarred, Suspended, Ineligible or Voluntarily Excluded Awardees without prior approval of the DOE contracting officer]; and

(xiv) Ensuring that access authorizations to classified information will not be a limiting factor in obtaining competition except where time will not permit securing additional authorizations.

(4) Small purchases (those valued at $25,000 or less or other value that may be approved by the HCA) should be made by methods designed, considering the award value, to:

(i) Obtain fair and reasonable prices,

(ii) Reduce administrative costs of making such purchases to the minimum required in order to establish the propriety of placing the order at the price paid with the supplier concerned, and

(iii) Improve opportunities for small and small disadvantaged business concerns to obtain a fair proportion of awards.

(5) A fair proportion of supplies and services shall be purchased from small business concerns, small disadvantaged business concerns, labor surplus area concerns, and woman-owned business concerns. Publication of appropriate requirements in the Commerce Business Daily is one method that may be used to promote the participation of such concerns.

(6) Price or cost analyses shall be performed consistent with the principles of FAR Subpart 15.8 and Subpart 915.8 of this regulation.

(7) Allowable costs for cost reimbursable subcontracts are to be determined in accordance with the cost principles of FAR Part 31, appropriate for the type of organization to which the subcontract is to be awarded, as supplemented by Part 931. Allowable costs in the purchase or transfer from contractor-affiliated sources shall be determined in accordance with 970.7105 and 970.3102-15(b).

(8) The contractor's purchasing system and methods shall establish a dollar value above which the basis for each non-competitive purchase must be clearly documented and a dollar value above which non-competitive purchases must be supported by separate justifications prepared by the requesting organization, and approved at appropriate levels in the contractor's purchasing organization.

(9) The selection of the type of contract to be used should be based on consideration of the nature of the supplies and services required and other circumstances surrounding the purchase. The cost-plus-percentage-of-cost method of contracting shall not be used in any event.

[53 FR 24232, June 27, 1988; 54 FR 1288, Jan. 12, 1989]

970.7104 Conditions of purchasing by management and operating contractors.

This section and the entire subpart provide the standard against which the cognizant DOE contracting officer shall evaluate the purchasing system and methods of a management and operating contractor. The following specific provisions, some of which are implementations of statute or applicable Government or DOE policies, pertain to purchasing by DOE management and operating contractors. To the extent these provisions allow for the exercise of discretion by management and operating contractors, the contracting officer will use as the standard of compliance the exercise of good business judgment by the management and operating contractor in pursuit of carrying out the contractual mission. Where compliance with this section requires the use of clauses from the FAR or DEAR, the contracting officer shall assure that the purchasing system and methods of the M&O contractor ensure that the relationship between the contractor and subcontractor is clearly described and that references to the Government and the contracting officer are changed, as appropriate, to refer to the contractor.

970.7104-1 Contingent fees.

The policies and requirements of FAR Subpart 3.4 shall be applied to the purchasing activities of management and operating contractors. See 970.5203-1 for the amendment to the clause at FAR 52.203-5.

970.7104-2 Record retention requirements.

The record retention requirements for cost-reimbursement type subcontractors to management and operating contractors shall be in accordance with the clause at 970.5204-9.

970.7104-3 Acquisition of utility services.

When authorized by DOE (subject to appropriate delegation) to acquire utility services, such acquisition shall be in compliance with 970.0803.

970.7104-4 [Reserved]

970.7104-5 Leasing of motor vehicles.

Management and operating contractors shall abide by the provisions of FAR 8.11 and 908.11 in the leasing of motor vehicles.

970.7104-6 Strategic and critical materials.

Management and operating contractors who use strategic and critical materials shall fulfill their requirements in accordance with 908.70.

970.7104-7 Purchases of special items.

(a) Purchase of the following items shall be in accordance with the provisions of the DEAR and FPMR, as shown.

Item	Citation
(1) Motor vehicles	908.7101
(2) Aircraft	908.7102
(3) Office machines	908.7103
(4) Office furniture and furnishings	908.7104
(5) Filing cabinets	908.7105
(6) Security cabinets	908.7106
(7) Alcohol	908.7107
(8) Helium	908.7108
(9) Fuels and packaged petroleum products.	908.7109
(10) Coal	908.7110
(11) Arms and ammunition	908.7111
(12) Relacement materials handling equipment.	908.7112
(13) Calibration services	908.7113
(14) Wiretappinig and eavesdropping equipment.	908.7114
(15) Forms	908.7115
(16) Electronic data processing tapes	908.7116
(17) Tabulating machine cards	908.7117
(18) Rental of post office boxes	908.7118
(19) Heavy water	908.7121(a)
(20) Precious metals	908.7121(b)
(21) Lithium	908.7121(c)
(22) Products and services of the blind and other severely handicapped.	FPMR 41 CFR 101-26.701
(23) Products made in Federal penal and correctional institutions.	FPMR 41 CFR 101-26.702

(b) The management and operating contractor's purchasing system and methods may provide for the acquisition of items (3), (4), and (5) of the table from non-Federal Supply Schedule sources in those circumstances in which items of the same or greater quality may be purchased at a lesser price, or there is otherwise an inability to meet a critical program schedule.

970.7104-8 Purchasing alternative determinations.

(a) Management and operating contractors shall provide in their purchasing systems and methods, using FPMR 41 CFR 101-25.5 as a guide, for a system to determine whether required equipment should be purchased or leased. The system based upon these guidelines shall establish appropriate thresholds for application (as approved by the HCA) of lease-versus-purchase determinations and shall be used in making such determinations:

(i) At time of original acquisition,

(ii) When lease renewals are being considered, or

(iii) At other times as circumstances warrant.

(b) The contracting officer shall assure that the management and operating contractor provides in its purchasing system and methods for a determination of whether to purchase certain goods or services or provide those goods or services within its own organization. While cost may be a significant factor, the determination may also consider such things as efficiency of performance, scheduling, classification and security, control of production or performance, and maintenance of management and operating contractor capabilities.

970.7104-9 Qualifications requirements.

(a) Management and operating contractors are authorized to use Qualified Bidders Lists (QBL), Qualified Material Lists (QML) and Qualified Products Lists (QPL), developed by executive agencies pursuant to FAR Subpart 9.2, for the purchase of goods or services for which list(s) was developed.

(b) Heads of Contracting Activities may authorize management and operating contractors to develop QBLs, QMLs, or QPLs for critical applications; however, management and operating contractors shall not unnecessarily restrict potential suppliers from qualification testing and inclusion among qualified vendors. Management and operating contractors shall provide in their purchasing systems and methods for periodic review of the items or sources on these lists to assure the need to continue the restrictions.

970.7104-10 Organizational conflicts of interest.

(a) Management and operating contractors shall abide, by 909.5 in their purchase of supplies and services as if their subcontractors, including consultants, at any tier were performing the work as prime contractors to DOE.

(b) The cognizant contracting officer is the individual authorized to determine whether there exists, with regard to a proposed subcontract, little or no likelihood of an organizational conflict of interest.

(c) In obtaining disclosure of relevant interests in appropriate potential subcontracts, management and operating contractors may allow proposers to submit their responses directly to the cognizant contracting officer.

970.7104-11 Cost of pricing date.

(a) Management and operating contractors are required to:

(1) Obtain certified cost or pricing date prior to the:

(i) Award of a negotiated subcontract when the subcontract price is expected to exceed $100,000; or

(ii) Modification of any subcontract when the price adjustment is expected to exceed $100,000, unless unrelated and separately priced changes, for which certified cost or pricing data would not otherwise be required, are included.

(2) Incorporate appropriate contract provisions that provide for the reduction of a negotiated subcontract price by any significant amount that the subcontract price was increased because of submission of subcontractor defective cost or pricing data, at any tier.

(b) The exemptions from certified cost or pricing data identified by FAR 15.804-3 shall also apply in implementing the above cost or pricing data requirements.

(c) The clause at 970.5204-24 shall be included in management and operating contracts requiring the flowdown of the provision contained therein to subcontractors at all tiers as described therein.

970.7104-12 Small business and small disadvantaged business concerns.

(a) The policies and procedures in the following FAR sections and subpart shall be applied to the purchasing activities of management and operating contractors in their unilateral initiation of small business set-asides: 19.301, 19.302, 19.502-2, 19.502-3, 19.508(b), 19.508(c), 19.508(d), and Subpart 19.7.

(b) Protests received by management and operating contractors regarding small business status shall be referred to the Small Business Administration through the cognizant DOE contracting officer. Inquiries as to whether a given concern qualifies as a disadvantaged business will be forwarded through the cognizant DOE contracting officer to the SBA for response.

(c) Purchases of $25,000 or less awarded through small purchase procedures shall be reserved exclusively for small businesses where there is a reasonable expectation that bids, competitive as to price, quality and delivery, will be obtained from two or more responsible small business concerns.

(d) Purchase by a management and operating contractor of construction estimated to cost $3 million or less, including new construction, and repair and alteration of structures, shall be required to be set aside on a class basis for small business concerns. When, in the judgment of the contractor, a particular acquisition falling within these dollar limits is determined to be unsuitable for a small business set-aside, notification shall be made to the DOE contracting officer. Upon obtaining the approval of the DOE contracting officer, the contractor may proceed to process the acquisition on an unrestricted basis. For acquisition of construction in excess of $3 million, small business set-aside preferences should be considered on a case-by-case basis.

(e) Management and operating contractors may provide in their purchasing systems and methods for the setting aside of requirements for small disadvantaged businesses, provided there are sufficient such qualified entities available to assure effective competition, and provided that the cost or price of the successful offer is found by the M&O contractor to be fair and reasonable.

(f) In pursuit of the objective of M&O purchasing of a fair proportion of supplies and services from the concerns described at 970.7103(b)(5), the HCA may authorize the use of innovative means after approval by the Procurement Executive and the DOE Office of Small and Disadvantaged Business Utilization.

(g) Management and operating contractors shall prepare quarterly reports on utilization of small business, small disadvantaged business, and women-owned small business in accordance with the directions of the DOE contracting officer.

970.7104-13 Labor surplus area concerns.

(a) Management and operating contractors are authorized to unilaterally initiate labor surplus area (LSA) set-asides where there is a reasonable expectation that bids or proposals will be obtained from a sufficient number of responsible LSA concerns so as to ensure that awards will be made at fair and reasonable prices. The priorities set forth in FAR 19.504 are to be utilized in determining the type of set-aside to be employed.

(b) Protests received or questions raised by contractors regarding LSA status shall be handled in consultation with the Department of Labor through the DOE contracting officer.

(c) LSA set-aside purchases made by management and operating contractors shall be reported quarterly in a form satisfactory to the DOE contracting officer.

970.7104-14 Convict labor.

The provisions of FAR Subpart 22.2 shall apply to purchases by management and operating contractors.

970.7104-15 Contract Work Hours and Safety Standards Act (other than construction contracts).

The requirements of FAR Subpart 22.3 shall apply to purchases by management and operating contractors to the same extent and under the same conditions such requirements apply to direct DOE procurements.

970.7104-16 Labor standards for contracts involving construction.

The requirements of FAR Subpart 22.4 apply to subcontracts involving construction awarded by DOE management and operating contractors to the same extent that they would if the subcontract had been directly awarded by DOE. Subpart 922.4 provides guidance, including examples of work situations, to assist in determining the applicability of these standards. The Davis-Bacon Act is deemed to apply to purchases by management and operating contrators in accordance with 970.2273.

970.7104-17 Walsh-Healey Public Contracts Act.

The requirements of FAR Subpart 22.6 and this section shall apply to purchases by management and operating contractors to the same extent and under the same conditions such requirements apply to direct DOE procurements.

970.7104-18 Equal employment opportunity.

The equal employment opportunity provisions of FAR Subpart 22.8 and Subpart 922.8, of this chapter, including E.O. 11246 and 41 CFR Part 60, are applicable to subcontracts awarded by DOE management and operating contractors.

970.7104-19 Service Contract Act.

(a) It is the policy of DOE that subcontracts awarded by management and operating contractors are subject to the Service Contract Act to the same extent and under the same conditions as contracts awarded directly by DOE.

(b) Subcontracts awarded by management and operating contractors shall include the applicable clause in FPR Temporary Regulation No. 76 or successor FAR coverage with such modifications as would otherwise be appropriate had this clause been included in the prime contract.

970.7104-20 Special disabled and Vietnam Era veterans.

The provisions of FAR Subpart 22.13 shall apply to purchases by management and operating contractors.

970.7104-21 Application of environmental and occupational safety and health programs.

Contracting officers shall assure that management and operating contractors address environmental and occupational safety and health concerns in covered purchases in accordance with 970.2303. Management and operating contractors shall include the clauses at 970.5204-2, 970.5204-26, 952.223-72, and 952.223-75 in appropriate subcontracts and provide for flowdown to appropriate lower tier subcontracts.

970.7104-22 Buy American.

(a) Management and operating contractors are required, as reflected in the contract clauses prescribed at 970.7103-3 and 970.7103-5, to comply with the provisions of the Buy American Act. The list at FAR 25.108(d) contains excepted articles, materials, and supplies which have been determined to be unavailable in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(b) Determination of nonavailability under FAR 25.102 may be made by the DOE contracting officer responsible for the administration of the M&O contract.

(c) When the management and operating contractor's purchasing system and methods have been approved after a review in accordance with 970.7102(b), the Head of the Contracting Activity may authorize the contractor to make determinations of nonavailability for individual items under individual procurement actions. Each authorization shall be in writing and shall specify a dollar value limit for the aggregate of domestically unavailable items in individual procurement actions. Authorizations for dollar value limits in excess of $25,000 require the prior concurrence of the Procurement Executive. Each authorization shall also specify the effective date, the activity, the division or facility authorized to make the determination, the period of effectiveness, and any special conditions or requirements.

970.7104-23 Patents, data, and copyrights.

Contracting officers shall assure that management and operating contractors' purchasing systems and methods provide for distribution of patent and data rights and copyrights in their purchases in accordance with 970.27.

970.7104-24 Bonds and insurance.

The contracting officer shall assure that management and operating contractors provide in their purchasing systems and methods for obtaining bonds (i.e. bid, performance and payment bonds) from subcontractors as provided in this subsection and in a manner that will assure adequacy and legal sufficiency of all types of bonds and the acceptability of sureties in accordance with this subsection to protect the interests of the United States. The contractor's purchasing system and methods shall treat the obtaining of insurance in accordance with FAR Subpart 28.3 and DEAR Subpart 928.3.

(a) *Performance bonds*—(1) *Construction subcontracts.* A performance bond on Standard Form 25 (modified to name the M&O contractor as well as the United States of America as obligees) shall be required for all fixed price and unit-price construction subcontracts in excess of $25,000 and subcontracts under cost-reimbursement type subcontracts. The penal amounts shall be determined as set forth in FAR 28.102(a).

(2) *Other than construction subcontracts.* Situations which may warrant the requiring of performance bonds in addition to those listed in FAR 28.103-2(a) are:

(i) Where doubt exists as to the financial or technical ability of likely suppliers.

(ii) Where the subcontractor's talent is overly concentrated in a few key personnel whose illness or departure could seriously impair the subcontractor's ability to perform the proposed work.

(iii) Where other commitments of the subcontractor might delay performance.

(iv) Where a delay in performance of the proposed work might disrupt other operations of the management and operating contractor and impair its overall efficiency; or

(v) Where the item being manufactured is a component for another article and is required by a particular date in order to avoid delay in delivery of the end product.

(b) *Payment bonds*—(1) *Construction subcontracts.* A management and operating contractor shall be required to obtain from the subcontractor a payment bond on Standard Form 25A, modified to name the management and operating contractor, as well as the United States of America, as obligees for all fixed price and unit-price construction subcontracts in excess of $25,000. The management and operating contractor shall be required to include such a requirement in its cost-reimbursement construction subcontracts in excess of $25,000. The penal amounts shall be determined as set forth in FAR 28.102-2.

(2) *Other than construction subcontracts.* The management and operating contractor may make a determination that it is necessary on an individual subcontract to require payment bonds in connection with other than construction work. Whenever the management and operating contractor has reason to believe that work under a proposed action might be delayed because of concern over the credit standing of a prospective subcontractor, it should consider the advisability of requiring a payment bond.

(c) *Corporate co-sureties.* More than one corporate surety may be accepted as surety upon recognizance, stipulation, bond, or undertaking in connection with either construction or other contracts, provided that in no case will the liability of any such co-surety exceed the maximum penal sum in which the corporate surety is qualified to any one obligation. On bonds covering contracts other than construction contracts, where the amount of the bond is greater than the limitation of the corporate surety, the latter may reinsure with a corporation on the acceptable list of corporate sureties having the required underwriting capacity. Reinsurance agreements are not acceptable in connection with construction contracts. Corporate co-sureties need not obligate themselves for the full amount of the bond. Each corporate surety may, by setting forth the limit of its liability in the bond as a definite and specified sum, limit such liability on the condition that each co-surety bind itself "jointly and severally" for the purpose of allowing a joint action or actions against any or all of them.

970.7104-25 Indemnification.

Contracting officers shall assure that management and operating contractors provide in their purchasing systems and methods for the treatment of nuclear hazards indemnification in subcontracts in accordance with paragraphs (f) and (g) of 970.2870. No subcontractor may be otherwise indemnified except with the prior approval of the Procurement Executive.

970.7104-26 Taxes.

(a) Contracting officers should assure that tax matters are appropriately treated in their review and approval of management and operating contractors' purchasing systems and methods and in their review and approval of individual subcontracts by the contractor.

(b) The purchasing system and methods of a management and operating contractor shall require:

(1) The inclusion of a clause similar to that at 970.5204-23 in cost-type subcontracts of any tier where the prime contract or higher-tier subcontract(s) are cost-type which clause will require the subcontractor to take certain actions with regard to nonpayment, payment, protest, or other treatment of specific taxes.

(2) The inclusion of an appropriate tax clause in all fixed-price purchase orders and subcontracts and should contain provisions covering all tax matters which may require special consideration.

970.7104-27 Audit of subcontractors.

(a) Contracting officers shall assure that management and operating contractors provide in their purchasing systems and methods for:

(1) periodic postaward audit of cost-reimbursement subcontractors at all tiers and

(2) Audits, where necessary, to provide a valid basis for pre-award cost or price analysis.

Responsibility for determining the costs allowable under each cost-reimbursement subcontract remains with the management and operating contractor or next higher-tier subcontractor. Management and operating contractors' purchasing systems and methods shall provide, in appropriate cases, for the timely involvement of the management and operating contractor and the DOE contracting officer in resolution of questions of subcontract cost allowability.

(b) Where audits of subcontracts of any tier are required, arrangements may be made to have the cognizant Federal agency perform the audit of the subcontract. These arrangements shall be made administratively between DOE and the other agency involved and shall provide for the cognizant agency to audit in an appropriate manner in light of the magnitude and nature of the costs of the subcontract. The contracting officer shall assure that the audit results properly reflect the application of the applicable cost principles of the subcontract (See 970.7103 (b)(7)). In no case, however, shall these arrangements preclude determination by the DOE contracting officer of the allowability or unallowability of subcontractor costs claimed for reimbursement by the management and operating contractor.

970.7104-28 Construction and architect-engineer (A-E) contracts.

(a) *Scope.* Contracting officers shall assure that management and operating contractors provide in their purchasing systems and methods for acquisition of A-E services and construction in conformance with this subsection. FAR Part 36 and DEAR Part 936 shall be used as guides.

(b) *Independent estimates.* A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted under management and operating contracts. The services of an architect-engineer, the management and operating contractor, another management and operating contractor, or a construction contractor other than the constructor may be used, as appropriate, in the preparation of the independent estimate.

(c) *Specifications.* Management and operating contractors shall assure that specifications for construction are prepared in accordance with the DOE publication entitled "General Design Criteria Manual" (DOE Order 6430.1, dated December 12, 1983, or successor version) in preparing specifications for construction work.

(d) *Agreement for rental of construction equipment.* Management and operating contractors shall provide in their purchasing systems and methods for the rental of construction equipment from a third party in accordance with the agreement outlined at 936.7102.

(e) *Guidelines for the award of architect-engineer subcontracts.* The Brooks Act, Pub. L. 92-582, establishes the policy and procedures necessary to assure that selection of A-E contractors by the Federal Government is based solely upon the qualifications of competing A-E firms. That Act does not directly govern the award of A-E subcontracts by DOE management and operating contractors. HCAs shall assure that the purchasing systems and methods of management and operating contractors reflect the essence of the Federal policy by providing for selection of A-E subcontractors based primarily upon proposers' qualifications, however, this does not preclude the consideration of other factors, including cost or price, in the selection of A-E subcontractors.

(f) *Prevention of conflict of interest*—(1) *Limitations on architect-engineer/construction services.* Combinations of subcontracts for architect-engineer and construction services, which may result in self-inspection of construction work, tend to prevent a subcontractor from rendering unbiased decisions, or create difficulties in segregating costs between subcontracts, and should be avoided. Unless otherwise authorized by the HCA, the following relationships shall not be established within any subcontract(s) awarded by a management and operating contractor involving the same firm or affiliated companies:

(i) A subcontract or combination of subcontracts for both architect-engineer and construction services on the same construction project. Should the HCA authorize the M&O to award a subcontract(s) to a firm or affiliates under which it is to be responsible for both design and construction services, Title III inspection services shall be performed by another organization approved by DOE.

(ii) Both a cost-reimbursement subcontract and fixed-price subcontract for different projects if any portion of the work under either subcontract will be performed concurrently in the same general location. This restriction applies to subcontracts for construction services, architect-engineer services, or construction and architect-engineer services.

(iii) The provisions of paragraph (f)(1)(i) of this section shall not preclude the award of a single subcontract for the delivery of a discrete facility, e.g., "turnkey contract," so long as the subcontractor assumes all liability for defects in design and construction and consequential damages. Such subcontracts should provide for periodic inspection of the construction of the facility by the management and operating contractor or DOE or both.

(2) *Limitation on inspection.* (i) Inspection services may be performed by the architect-engineer responsible for the design. Inspection services may not be purchased from a fixed-price construction subcontractor with respect to its own work. Under cost-reimbursement type subcontracts where the construction subcontractor and architect-engineer subcontractor are the same, some degree of self-inspection may be permitted, but shall not constitute final inspection and acceptance by the Government.

(ii) When one subcontractor is to inspect the work of another, the inspecting subcontractor will be given written instructions by the M&O contractor defining its responsibilities and stating that it is not authorized to modify the terms and conditions of the subcontract, direct any additional work, waive any requirements of the subcontract, or settle any claims or disputes. Copies of the instructions will be given to the subcontractor who is to be inspected, with a request to acknowledge receipt on one copy and return it to the M&O contractor. In this manner, both subcontractors are on notice as to the authority and limitations on the authority of the inspecting subcontractor.

970.7104-29 Quality assurance.

Contracting officers shall assure that management and operating contractors provide in their purchasing systems and methods for inspection and acceptance and the use of an appropriate clause. Such provisions shall provide no less protection for the Government than is provided by the contract articles in prime contracts.

970.7104-30 Termination.

(a) The termination clause included in management and operating contracts gives the Government the right to terminate the contract for convenience or default and provides that after receipt of a termination notice the contractor shall, to the extent requested by the contracting officer, cancel existing orders, subcontracts and commitments. Also, management and operating contractors may find it necessary to terminate subcontracts either for default or convenience in the course of exercising responsibilities for program or project performance under the contract rather than as a result of termination of the prime contract. Therefore, contracting officers shall assure that the purchasing systems and methods of management and operating contractors provide for the inclusion of an appropriate termination clause or clauses in their subcontracts. The termination clauses set forth at FAR 52.249-1 through 52.249-14 may be used as guides in the development of subcontract termination clauses.

(b) When subcontracts are terminated as a result of the termination of all or a portion of the prime contract, contractors shall settle with subcontractors in conformity with the policies and principles relating to settlement of prime contracts in FAR Subparts 49.1, 49.2, and 49.3. When subcontracts are terminated for reasons other than termination of the prime contract, the contractor shall settle such subcontract terminations in general conformity with the policies and principles in FAR Subparts 49.1, 49.2, and 49.3, and 49.4. In any event, each such termination settlement shall be documented. Those which require approval by the Government pursuant to prime contract requirements or approved procedures must be supported by accounting data and other information as may be directed by the DOE contracting officer. Also, the settlement must be in conformity with the provisions of the subcontract and consistent with provisions of the management and operating contract.

[53 FR 24232, June 27, 1988; 54 FR 1288, Jan. 12, 1989]

970.7104-31 Authorization for subcontractors' use of Government supply sources.

With the approval of the DOE contracting officer, management and operating contractors may authorize cost-reimbursement type subcontractors, where all higher tier subcontractors are cost-reimbursement types, to acquire materials and services directly from Government sources of supply in accordance with the requirements of 970.51 or the consent of agencies involved.

970.7104-32 Safeguarding classified information.

Contracting officers shall assure that management and operating contractors provide in their purchasing systems and methods for the inclusion in appropriate subcontracts of clauses consistent with 970.0404.

970.7104-33 Cost Accounting Standards.

The provisions of FAR Part 30 shall apply to purchases by management and operating contractors.

970.7104-34 Clean air and water.

The provisions of FAR Subpart 23.1 shall apply to purchases by management and operating contractors.

970.7104-35 Air transportation by U.S.-flag carriers.

The provisions of FAR Subpart 47.4 shall apply to purchases by management and operating contractors.

970.7104-36 Acquisition of real property.

Management and operating contractors shall contract for the lease or purchase of real property in accordance with 917.74.

970.7104-37 Management, acquisition, and use of information resources.

Contracting officers shall assure that management and operating contractors provide in their purchasing systems and methods, with regard to the purchase of automatic data processing resources and telecommunication facilities, services, and equipment, for review and approval of requirements in ways that conform to the procedures contained in applicable

DOE orders (1360 series and 5300 series, respectively).

970.7104-38 Privacy Act.

Management and operating contractors shall award and administer applicable subcontracts in accordance with FAR Subpart 24.1.

970.7104-39 Officials not to benefit.

Mangement and operating contractors shall abide by the provisions of FAR Subpart 3.1 in the award of subcontracts.

970.7104-40 Subcontractors reporting systems.

Contracting officers shall assure that management and operating contractors provide in their purchasing systems and methods for the flowdown of the cost and schedule control system requirement as provided at 970.5204-50. In addition for subcontracts of lesser value, those purchasing systems and methods shall provide for the receipt from subcontractors of status, manpower, and financial information necessary to comply with DOE requirements for financial and performance data for subcontracts at all tiers.

970.7104-41 Employment of the handicapped.

The provisions of FAR Subpart 22.14 shall apply to purchases by management and operating contractors.

970.7104-42 Unclassified controlled nuclear information.

Contracting officers shall assure that management and operating contractors provide in their purchasing systems and methods for treatment of unclassified controlled nuclear information in accordance with 10 CFR Part 1017.

970.7104-43 Government property.

Contracting officers shall assure that management and operating contractors provide in their purchasing systems and methods for the identification, inspection, maintenance, protection, and disposition of Government property in conformity with the policies and principles in FAR 45, DEAR 945, the Federal Property Management Regulations, the DOE Property Management Regulations, and their contracts.

970.7104-44 Foreign travel.

Contracting officers shall assure that management and operating contractors provide in their purchasing systems and methods for DOE approval consistent with the clause at 952.247-70 of foreign travel under subcontracts.

970.7104-45 Anti-Kickback Enforcement Act of 1986.

Contracting officers shall assure that management and operating contractor purchasing systems and methods provide for compliance in subcontracting with the FAR Subpart 3.502.

970.7104-46 Setoff of assigned subcontract proceeds.

Contracting officers shall assure that the management and operating contractors provide in their purchasing systems and methods that in cases in which they have allowed a subcontractor to assign payments to a financial institution, the assignment shall treat any right of setoff in accordance with 932.803.

970.7104-47 Additional flowdown and extension provisions.

In addition to the clauses and provisions required to be included in appropriate subcontracts awarded by management and operating contractors, there are certain clauses the provisions of which require flowdown or extension to subcontractors. These are:

Examination of Records by the Comptroller General	970.5203-2
Accounts, Records, and Inspection	970.5204-9
Printing	970.5204-19
Priorities, Allocations, and Allotments	970.5204-33

970.7105 Purchasing from contractor-affiliated sources.

(a) A management and operating contractor may purchase from sources affiliated with the contractor (any division, subsidiary, or affiliate of the contractor or its parent company) in the same manner as from other sources, provided:

(1) The management and operating contractor's purchasing function is independent of the proposed contractor-affiliated source;

(2) The same terms and conditions would apply if the purchase were from a third party;

(3) Award is made in accordance with policies and procedures designed to permit effective competition which have been approved by the contracting officer (See 970.7101(c)). (This requirement for competition shall not preclude acquisition of technical services from contractor-affiliated entities where those entities have a special expertise, and the basis therefor is documented.); and

(4) The award is legally enforceable where the entities are separately incorporated.

(b) Subcontracts for performance of contract work itself (as distinguished from the purchase of supplies and services needed in connection with the performance of work) require DOE authorization and may involve an adjustment of the contractor's fee, if any. If the management and operating contractor seeks authorization to have some part of the contract work performed by a contractor-affiliated source, and that contractor's performance of that work was a factor in the negotiated fee, DOE approval would normally require:

(1) That the contractor-affiliated source perform such work without fee or profit, or

(2) An equitable downward adjustment to the management and operating contractor's fee, if any.

(c) Determination on cost of money allowance as prescribed at FAR 31.205-10 shall be treated as follows:

(1) When a purchase from a contractor-affiliated source results from competition and is in accord with provisions and conditions of paragraphs (a)(1) through (a)(4) of this section, the contractor-affiliated source may include cost of money as an allowable element of the costs of its goods or services supplied to the contractor; provided:

(i) The purchase is based on cost as set forth in 970.3102-15 and

(ii) The cost of money amount is computed in accordance with FAR 31.205-10 and related procedures (see 970.30).

(2) When a purchase from a contractor-affiliated source is made non-competitively, cost of money shall not be considered an allowable element of the cost of the contractor-affiliated source purchase.

970.7106 Procedures for handling mistakes relating to management and operating contractor purchases.

(a) HCAs shall assure that management and operating contractors include in their purchasing systems and methods provision for correction of mistakes in bids and withdrawal of offers.

(b) Such systems shall make provision for correction of mistakes before award only upon the offering by the bidder of clear and convincing evidence of the mistake and the bid intended. Those systems shall distinguish situations in which another bidder's lower bid may be displaced if the correction were to be allowed.

(c) The systems shall deal with mistakes after award and shall result in rescission or reformation of the contract only upon a clear and convincing showing of mutual mistake.

(d) The systems shall allow withdrawal of a bid if there is sufficient evidence to establish a mistake but otherwise does not meet the necessary tests for correction, stated in paragraphs (b) and (c) of this section.

(e) In all cases before any remedial action is allowed, it shall be determined that the mistake was made in good faith and that the interests of the United States are not prejudiced.

(f) Corrections of mistakes or other remedial actions taken pursuant to this section shall be documented by a written statement setting forth the circumstances and basis for such action and shall be made a part of the subcontract file.

970.7107 Protest of management and operating contractor procurements.

(a) The General Accounting Office (GAO) policies on protests state that GAO will consider subcontract-level protests when the subcontracts are "by" or "for" the Government. The term "for" has generally been defined by the GAO as including acquisitions by management and operating (M&O) contractors.

(b) The Department of Energy will also consider protests of acquisitions of M&O contractors.

(c) Upon receipt or notice of a protest filed with the GAO, or with the Department against an M&O contractor acquisition, the cognizant DOE contracting activity shall assure that the M&O contractor is aware of such protest and prepare or coordinate the preparation by the contractor of a report for submittal to the GAO or the Department official deciding the protest. Such a report shall be prepared in accordance with the applicable procedures in FAR Part 33 and Part 933 of the DEAR.

(d) Assistance shall be obtained from the local DOE Counsel in the preparation of the report and any supplementary documents setting forth the position of the contracting activity relative to a protest.

(e) Upon receiving notice of a protest to the Department involving an M&O procurement action prior to award, the contracting activity shall direct that award not be made prior to resolution of such protest unless an HCA request to make award, concurred in by counsel, using the criteria of 933.103(a), and endorsed by the program secretarial officer, is approved by the Procurement Executive. If notice of a protest is filed with the DOE contracting officer within 10 days after award, the contracting activity shall contact the Business Clearance Division, Headquarters, for guidance as to continuation of performance or issuance of a stop work order.

(f) Since the bid protest provisions of the Competition in Contracting Act of 1984 (Pub. L. 98-369) (CICA) only apply to acquisitions by Federal executive agencies, the CICA "stay" provisions (sections 3553 (c) and (d) of Pub. L. 98-369 and cost recovery provisions (section 3554(c), Pub. L. 98-369) do not apply to protests lodged with the GAO that involve M&O contractor acquisitions. Nevertheless, upon receiving notice of a protest to the GAO involving an M&O acquisition whether prior to or after award, the contracting activity shall immediately contact the Business Clearance Division, Headquarters, for guidance on suspending award or suspending performance.

(g) The General Services Board of Contract Appeals hears subcontract level protests involving the purchase of Automatic Data Processing Equipment (ADPE), as defined at 40 U.S.C. 759(a)(2)(A), only in cases in which the prime contractor is acting as a purchasing agent for the Government. Should a protest be lodged against an M&O's purchase of ADPE, upon receiving notice of the protest, the cognizant DOE contracting officer shall promptly notify local counsel and the Office of the Assistant General Counsel for Procurement and Finance, Headquarters (AFCPF). The Department's position on such subcontract level protests shall be coordinated with the AGCPF. The contracting officer, promptly after receipt of a protest, and the decision(s) of the GSBCA, shall also furnish a copy thereof with related pertinent correspondence to the Business Clearance Division, Headquarters.

970.7108 Review and approval.

(a) Heads of Contracting Activities shall establish thresholds by subcontract type and dollar level for the review and approval of proposed subcontracting actions by each management and operating contractor under their cognizance. Such thresholds may not exceed the authority delegated to the Head of the Contracting Activity by the Procurement Executive. In establishing these review and approval thresholds, the Heads of Contracting Activities should consider such factors as the following:

(1) The nature of work to be performed under the management and operating contract;

(2) The size, experience, ability, reliability, and organization of the management and operating contractor's purchasing function;

(3) The internal controls, procedures, and organizational stature of the management and operating contractor's purchasing function; and

(4) Policies with respect to such reviews and approvals established by the Procurement Executive.

(b) Prior approval shall be required for the subcontracting of any work a contractor is obligated to perform under a contract entered into under section 41, entitled Production of Special Nuclear Material, of the Atomic Energy Act of 1954, as amended.

(c) Heads of Contracting Activities shall take such action as may be required to insure compliance with the procedure for purchasing from contractor-affiliated sources or the purchase of specific items, or classes of items, which by the terms of the contract may require DOE approval.

(d) The Heads of Contracting Activities may raise or lower the review and approval thresholds established pursuant to paragraph (a) of this section at any time. Such action may be considered upon the periodic review of the contractor's purchasing system, but in any case those adjusted thresholds may not exceed the approval authority delegated to the Head of the Contracting Activity by the Procurement Executive.

(e) Department of Energy approvals of specific proposed purchases pursuant to this subpart shall communicate that such approval does not relieve the management and operating contractor of any obligation under its prime contract with DOE; is given without prejudice to any rights or claims of the Government thereunder; creates no obligation on the part of the Government to the subcontractor, and is not a predetermination of the allowability of costs to be incurred under the subcontract.

(f) Contracting officers shall assure that management and operating contractors establish and maintain subcontract files which contain those documents essential to present an accurate and adequate record of all purchasing transactions.

(g) Contracting officers shall assure that management and operating contractors document purchases in writing, setting forth the information and data used in determining that the purchases are in the best interest of the Government. The scope and detail of this documentation shall be consistent with the nature, dollar value, and complexity of the purchase.

(h) Heads of Contracting Activities will assure that the contracting activity establishes and maintains files of the documents associated with the review and approval of subcontract actions subject to DOE review and approval. Those files shall include, among other necessary documentation, an appraisal of the proposed action by the contracting activity and a copy of the approving or disapproving document forwarded to the management and operating contractor, containing a listing of any deficiencies, a listing of any required corrective actions, any suggestions, or other relevant comments.

970.7109 Advance notification.

(a) Pursuant to section 304(b) of the Federal Property and Administrative Service Act of 1949, as amended (41 U.S.C. 254(b)) contracting officers shall assure that the written description of the management and operating contractor's purchasing system and methods provides for advance notice to the DOE contracting officer of the proposed award of the following specified types of subcontracts, except as stated in paragraph (b) of this section:

(1) Cost reimbursement-type subcontracts of any award value; and

(2) Fixed price-type subcontracts which exceed $25,000; and

(3) Purchases from contractor-affiliated sources over a value established by the HCA.

(b) Pursuant to section 602(d)13 of the Act (40 U.S.C. 474(13)) referred to in paragraph (a) of this section, the advance notification requirement for the types of purchases listed in paragraphs (a) (1) and (2) of this section shall not apply to subcontracts relating to functions derived from the Atomic Energy Commission.

(c) The advance notice shall contain, as a minimum, a description of work, estimated cost, type of contract or reimbursement provisions, and extent of competition, or justification for a noncompetitive purchase procurement. The contracting officer may at any time request additional information that must be furnished promptly and prior to award of the subcontract.

970.7110 Nuclear material transfers.

(a) Management and operating contractors, in preparing contracts or other agreements in which monetary payments or credits depend on the quantity and quality of nuclear material, shall be required to assure that each such contract or agreement contains a:

(1) Description of the material to be transferred;

(2) Provision specifying the method by which the quantities are to be measured and reported;

(3) Provision specifying the procedures to be used in resolving any differences arising as a result of such measurements;

(4) Provision for the use of an independent third party as an umpire to settle unresolved differences in the analytical samples; and

(5) Provision specifying in detail which party shall bear the costs of resolving a difference and what constitutes such costs.

(b) The provisions providing for resolution of measurement differences must be such that resolution is always accomplished, while at the same time minimizing any advantage one party may have over the other.

PART 971—REVIEW AND APPROVAL OF CONTRACT ACTIONS

Sec.
971.000 Scope of part.

Subpart 971.1—Headquarters Review and Notification Requirements

971.100 Scope of subpart.
971.101 Requirements—general.
971.102 Requirement—long-term contracts.
971.103 Documentation submittals.

Subpart 971.2—Contracting Activity Review Requirements

971.200 Scope of subpart.
971.201 Requirements.
971.202 Responsibilities.
971.203 Review functions.

Sec.

Subpart 971.3—Procurement Management Systems Reviews

971.300 Scope of subpart.
971.301 Review of procurement management systems.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 12107, Mar. 28, 1984, unless otherwise noted.

971.000 Scope of part.

This part sets forth the administrative requirements for review and approval of certain solicitations and contract awards and a notification of Headquarters procurement system reviews.

Subpart 971.1—Headquarters Review and Notification Requirements

971.100 Scope of subpart.

This subpart establishes a requirement for Headquarters review of certain solicitations and contract awards made by DOE contracting activities.

971.101 Requirements—general.

Solicitations and contract awards which are in excess of authority delegated to Heads of Contracting Activities, likely to provoke unusual public interest, or of a new or unusual nature shall be submitted to the Procurement Executive or designee for appropriate review and approval. Contract actions are those actions relating to the letting of contracts, subcontracts, agreements with other governmental agencies, and subsequent modifications, extensions, and settlements of terminations thereof. Questions of contract policy or procedure which arise in the course of negotiation and administration of such contract actions shall be submitted for advance Headquarters review and approval.

971.102 Requirement—long-term contracts.

Heads of Contracting Activities shall notify the Controller, with a copy to the Procurement Executive, or any intent to utilize the long-term contract authority provided by subsection U. section 161 of the Atomic Energy Act of 1954, as amended by Pub. L. 85-681 (72 Stat. 633). Such advance notice should be provided at an early stage of planning on any such proposed contract action.

971.103 Documentation submittals.

(a) When contract awards require review and/or approval by Headquarters, (See 971.101) the following documentation is to be submitted to the Business Clearance Division, Headquarters, at the times set forth below:

(1) *Prior to negotiations.* Prior to the start of formal negotiations concerning contract awards the following documents are required for review:

(i) Five copies of the prenegotiation plan and draft contract (six copies in the case of operating and on-site service contracts which contain a personnel appendix).

(ii) One copy of the determinations and findings, as required by FAR 15.302.

(iii) If applicable, one copy of the justification for noncompetitive procurement (JNCP) or justification for acceptance of unsolicitated proposals (JNCP) should be provided.

(iv) One copy of documentation (including audits and technical evaluation of costs) to support a pricing action.

(2) *After completing negotiation.* If there were significant departures from the objectives of the prenegotiation plan, or new and significant issues were developed which were not addressed in the prenegotiation plan, one copy of the post negotiation summary shall be submitted for Headquarters' review and approval. In the event all of the prenegotiation objectives were substantially met, one information copy is to be submitted.

(3) *Prior to a sealed bid award.* (i) Four copies of the successful bid.

(ii) Copy of proposed contract.

(iii) Record of bid opening and selection.

(iv) Copy of the solicitation.

(4) *After completing a sealed bid award.* (i) Four copies of an award memorandum which documents that the award was made to the responsible, responsive bidder whose bid is most advantageous to the Government, price and other factors considered as provided in FAR 14.407.

(ii) One copy of any other documents the contracting officer believes would benefit the Headquarters review. (List of documents required for contract file are cited at FAR 4.803(a)).

(b) When solicitations require review and approval by Headquarters, two copies of the solicitation shall be submitted to the Business Clearance Division, Headquarters, in sufficient time prior to the planned release to allow a comprehensive review.

(c) The following information should also be provided with the documentation submitted to Headquarters:

(1) Name and telephone number of the cognizant Headquarters program official.

(2) The supporting documentation should include a copy of the local independent review, if any, conducted in accordance with 971.102.

[49 FR 12107, Mar. 28, 1984, as amended at 52 FR 38427, Oct. 16, 1987]

Subpart 971.2—Contracting Activity Review Requirements

971.200 Scope of subpart.

This subpart sets forth the administrative requirement for an independent Contracting Activity review of contracts to be awarded by that activity and subcontracts to be awarded by a prime or operating and management contract under a cost-reimbursement contract.

971.201 Requirements.

Prime contracts and subcontracts under cost-reimbursement contracts shall be reviewed, based on dollar thresholds to be established by Heads of Contracting Activities.

971.202 Responsibilities.

Each Head of Contracting Activity shall establish procedures, providing for an independent review by that activity prior to award of proposed contract and subcontract actions and to review termination settlements.

971.203 Review functions.

Responsibility for conducting the independent review of contract and subcontract actions shall be assigned to a contract review board or where it is impracticable to establish a contract review board, under appropriate alternate independent review procedures. The mode of conduct of the review is not prescribed herein in order to permit discretionary judgment in determining the depth to which significant areas are examined. The results of the review shall be documented showing the scope and extent of the review and written recommendations submitted to Heads of Contracting Activities (or to such other approving officials as may be appropriate) on each proposed contract or subcontract action reviewed. In the event the approving official departs from the recommendation of the review board, the basis for such action shall be appropriately documented in the files.

Subpart 971.3—Procurement Management System Reviews

971.300 Scope of subpart.

This subpart advises Contracting Activites of the Headquarters responsibility for oversight and review of Procurement Systems by contracting activities.

971.301 Review of procurement management systems.

The Procurement Executive is responsible for establishing and maintaining a program for the review of DOE procurement management systems. Review will be conducted in accordance with the procedures prescribed for that program. A review schedule will be published and maintained. Each contracting activity will be notified at least 60 days in advance of its review.

CHAPTER 10—DEPARTMENT OF THE TREASURY

(Parts 1000 to 1099)

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

Part		Page
1033	Protests, disputes, and appeals	648

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1033—PRCTESTS, DISPUTES, AND APPEALS

Subpart 1033.1—Protests

1033.103 Protests to the Agency.

Subpart 1033.2—Appeals

1033.270 Treasury contract appeals.

AUTHORITY: 41 U.S.C. 418b (a) and (b), as delegated by Department of the Treasury Order 101-30 and Treasury Directive 12-11.

Subpart 1033.1—Protests

1033.103 Protests to the Agency.

(a) *Policy.* It is the Department's policy to resolve protests in an informal manner whenever possible. Protesters are strongly encouraged to address their concerns to the contracting officer prior to resorting to litigation or other formal, external means of resolution. The objectives of the following procedures are to resolve agency protests effectively, to help build confidence in the Department's procurement system, to reduce the need to file protests at GAO or GSBCA, and to provide both the Department and the protester maximum information regarding their respective positions.

(b) *Procedures.* (1) Agency protest may be submitted by interested parties to the contracting officer, who will normally be designated in FAR provision 52.233-2 of the solicitation.

(2) Protests based on alleged improprieties in a solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals. In negotiated acquisitions, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing date for receipt of proposals following the incorporation.

(3) In cases other than those covered in paragraph (b)(2) of this section, protests shall be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier.

(4) Protests shall be in writing and shall include, as a minimum, the following information:

(i) Name, address, and telephone number of the protestor;

(ii) Solicitation or contract number;

(iii) Detailed statement of the legal and factual grounds for the protest, including copies of relevant documents;

(iv) Request for a ruling by the contracting officer to whom the protest is submitted;

(v) Statement as to the form of relief requested.

(5) Protest submissions shall be concise, logically arranged, and state sufficient grounds of protest. Failure to comply with any of the above requirements may be grounds for dismissal of the protest. A protester may request an informal conference with the contracting officer, which may be granted at the latter's sole discretion.

(6) Upon receipt of an agency protest, the contracting officer shall:

(i) Immediately notify legal counsel and the Departmental Office of Procurement (MMK) and provide each with a copy of the protest;

(ii) Prepare a report as prescribed in FAR 33.104(a)(2), except that, if the contract action or contract performance continues after receipt of the protest, the report shall include any determination prescribed in FAR 33.103(a) or 1033.103(b)(9);

(iii) Obtain review of the protest response by legal counsel and forward the protest response for MMK review and approval at least three working days prior to the due date; and

(iv) Ensure that the protest response is received by the protester no later than 25 working days after receipt of the protest.

(7) If the contracting officer and the protester agree on corrective action, a report is not required; however, in addition to amending the solicitation or taking other corrective action, the contracting officer shall inform the protester in writing of the proposed corrective action and shall obtain from

the protester a written notice withdrawing the protest. A copy of this notice and any amendment shall be provided to MMK.

(8) If a written protest before award has been lodged with the contracting officer, only the bureau chief procurement officer may make the determination described in FAR 33.103(a). Prior to making an award of a contract under the circumstances in FAR 33.103(a), the advice of legal counsel shall be obtained.

(9) If a written protest after award has been lodged with the contracting officer, the bureau chief procurement officer may authorize contract performance notwithstanding the pending protest if he or she makes a written determination that (i) performance of the contract is in the Government's best interest, or (ii) urgent and compelling circumstances significantly affecting interests of the United States do not permit waiting for the protest decision. A copy of this determination shall be forwarded to MMK.

(Approved by the Office of Management and Budget under control number 1505-0107)

[53 FR 12771, Apr. 19, 1988]

Subpart 1033.2—Appeals

1033.270 Treasury contract appeals.

The General Services Administration Board of Contract Appeals has been designated to serve as the authorized representative of the Secretary of the Treasury in hearing, considering, and determining all appeals of decisions of contracting officers filed by contractors pursuant to Subpart 33.2 of the FAR (other than contracts of the Comptroller of the Currency). Where "agency Board of Contract Appeal" appears in FAR Subpart 33.2 this shall be deemed to mean the General Services Administration Board of Contract Appeals. Appeals of contracting officer decisions under FAR Subpart 33.2 shall be governed by the Rules of the General Services Administration Board of Contract Appeals (48 CFR Chapter 61, (Part 6101)).

[50 FR 31844, Aug. 7, 1985; 51 FR 6741, Feb. 26, 1986]

CHAPTER 12—DEPARTMENT OF TRANSPORTATION

(Parts 1200 to 1299)

SUBCHAPTER A—GENERAL

Part — Page

1201 Federal Acquisition Regulations System 653
1202 Definitions of words and terms 656
1203 Improper business practices and personal conflicts of interest 658
1204 Administrative matters 659

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

1205 Publicizing contract actions 662
1206 Competition requirements 663
1207 Acquisition planning 666
1208 Required sources of supplies and services 667
1209 Contractor qualifications 667
1210 Specifications, standards, and other purchase descriptions 668
1212 Contract delivery or performance 670

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

1213 Small purchase and other simplified purchase procedures 671
1214 Sealed bidding 672
1215 Contracting by negotiation 673
1216 Types of contracts 680
1217 Special contracting methods 682

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

1219 Small business and small disadvantaged business concerns 684
1222 Application of labor laws to Government acquisitions 686
1223 Environment, conservation, and occupational safety 689

Part *Page*
1224 Protection of privacy and freedom of information. 689
1225 Foreign acquisition 690

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

1227 Patents, data and copyrights 691
1228 Bonds and insurance 692
1229 Taxes 694
1230 Cost accounting standards 695
1231 Contract cost principles and procedures 695
1232 Contract financing 696
1233 Protests, disputes, and appeals 697

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

1234 Major system acquisition 699
1235 Research and development contracting 699
1236 Construction and architect-engineer contracts 699
1237 Service contracting 704

SUBCHAPTER G—CONTRACT MANAGEMENT

1242 Contract administration 707
1243 Contract modifications 708
1244 Subcontracting policies and procedures 708
1245 Government property 709
1246 Quality assurance 714
1249 Termination of contracts 718
1250 Extraordinary contractual actions 718

SUBCHAPTER H—CLAUSES AND FORMS

1252 Solicitation provisions and contract clauses 719
1253 Forms 747

SUBCHAPTER A—GENERAL

PART 1201—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 1201.1—Purpose, Authority, Issuance

Sec.
1201.101 Purpose.
1201.102 Authority.
1201.103 Applicability.
1201.104 Issuance.
1201.104-1 Publication and code arrangement.
1201.104-2 Arrangement of regulations.
1201.104-3 Copies.
1201.105 OMB Approval under the Paperwork Reduction Act.

Subpart 1201.2—Administration

1201.201 Maintenance of the FAR.
1201.201-1 The two councils.
1201.270 Amendment of regulation.
1201.270-1 Revisions.
1201.270-2 TAR Notices.
1201.270-3 Effective date.
1201.270-4 Numbering.

Subpart 1201.3—Agency Acquisition Regulations

1201.303 Publication and codification.
1201-303-70 Administration regulations.
1201.304 Agency control and compliance procedures.

Subpart 1201.4—Deviations From the FAR

1201.401 Definition.
1201.403 Individual deviations.
1201.404 Class deviations.
1201.470 Deviations to and waivers from the requirements of Departmental orders related to acquisition.

Subpart 1201.6—Contracting Authority and Responsibilities

1201.601 General.
1201.602 Contracting officers.
1201.603 Selection, appointment, and termination of appointment.
1201.603-1 General.

AUTHORITY: Sec. 205(c) Federal Property and Administrative Services Act, as amended 40 U.S.C. 486(c); 41 U.S.C. 255 et seq., 10 U.S.C. 2301 et seq., 41 U.S.C. 403 et seq., as amended by Pub. L. 98-369; 48 CFR 1.301; 49 CFR 1.49.

SOURCE: 52 FR 44525, Nov. 19, 1987, unless otherwise noted.

Subpart 1201.1—Purpose, Authority, Issuance

1201.101 Purpose.

(a) The Department of Transportation Acquisition Regulation (TAR), is issued as Chapter 12, Title 48, the Federal Acquisition Regulations System, to establish uniform acquisition policies and procedures within the Department.

(b) The purpose of the TAR is to implement and supplement the Federal Acquisition Regulation (FAR).

1201.102 Authority.

The TAR is prescribed by the Assistant Secretary for Administration and the Senior Procurement Executive under a delegation of authority from the Secretary.

1201.103 Applicability.

(a) The FAR and the TAR apply to all acquisitions within the Department of Transportation except where expressly excluded in the FAR or in this Regulation.

(b) The Maritime Administration may depart from the requirements of the FAR and TAR as authorized by 40 U.S.C. 474(16), but shall adhere to those regulations to the maximum extent practicable. Exceptions from the FAR/TAR requirements shall be documented in administration regulations or procedures, or in each contract file.

1201.104 Issuance.

1201.104-1 Publication and code arrangement.

(a) The TAR is published in:

(1) The FEDERAL REGISTER,

(2) Cumulated form in the Code of Federal Regulations (CFR), and

(3) A separate loose-leaf form.

(b) The TAR is issued as Chapter 12 of Title 48 of the CFR.

1201.104-2 Arrangement of regulations.

(a) *General.* The TAR conforms with the arrangement and numbering system prescribed by FAR 1.104. The numbering illustrations at FAR 1.104-2(b) are equally applicable to the TAR.

(b) *Numbering.* (1) All coverage in the TAR that is unique to DOT will use part, subpart, section and subsection numbers 70-89.

(2) All coverage in the TAR, other than that identified with a 70 or higher number, implements the FAR and will bear the identical number sequence and title of the FAR segment being implemented down to the subsection level with the Department's "12" prefix (e.g., 1215.402 implements FAR 15.402).

1201.104-3 Copies.

Copies of the TAR in FEDERAL REGISTER and CFR form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402. Copies of the TAR in loose-leaf form are distributed within DOT and may be obtained from the Chief, Procurement Management Division, Office of the Secretary.

1201.105 OMB Approval under the Paperwork Reduction Act.

Under the regulations implementing the Paperwork Reduction Act of 1980, the Office of Management and Budget (OMB) must approve, prior to commitments of funds, proposed contract surveys which require the collection of information from ten or more non-federal persons or entities. Prior to committing funds and entering into a contractual agreement for such information collection activities, the contracting officer shall ensure that a clearance and approval has been obtained from OMB. The SF83, Request for OMB Review, will be used to request OMB's review and approval. SF83's must be forwarded to the Information Requirements Division (M-34) of the Office of Information and Resource Management, for processing to OMB. For assistance in preparing the information collection justification for the SF83, contact the administration's Paperwork Clearance Officer or the Information Requirements Division (M-34). Early coordination with M-34, prior to solicitation, should prevent any delays caused by the time required to obtain OMB approval. The information collection and recordkeeping requirements contained in this regulation have been approved by the OMB. The applicable OMB control number is 2105-0517.

Subpart 1201.2—Administration

1201.201 Maintenance of the FAR.

1201.201-1 The two councils.

The Senior Procurement Executive shall appoint the Department of Transportation representative to the CAA Council.

1201.270 Amendment of regulation.

This Regulation will be amended from time to time as determined necessary by the Senior Procurement Executive. Requests for changes to the TAR should be submitted to the Senior Procurement Executive, Office of the Secretary (M-60).

1201.270-1 Revisions.

This Regulation will be amended by issuance of TAR Directives (TDs) containing loose-leaf replacement pages which revise Parts, Subparts, or paragraphs (also see 1201.270-2 of this subpart). Each replacement page will bear at the top the TD number, page number and date. A vertical bar at the beginning or end of a line indicates that a change has been made within that line.

1201.270-2 TAR Notices.

(a) TAR Notices (TNs) shall also be published as often as may be necessary or advisable under any of the following circumstances:

(1) To promulgate as rapidly as possible selected material revising this Regulation, in a general or narrative manner, in advance of a specific page replacement to this Regulation.

(2) To disseminate material applicable to the acquisition process which is not suitable for insertion in this Regulation.

(3) When the policy and/or procedure is expected to be effective for a period of 1 year or less.

(b) Unless otherwise indicated, each item in a TN will remain in effect until the effective date of that subsequent revision which incorporates the item or until specifically canceled.

1201.270-3 **Effective date.**

(a) Statements in TDs and TNs to the effect that the material published therein is "effective upon receipt," upon a specific date, or that changes set forth in the Directive or Notice are "to be used upon receipt," mean that any new or revised provisions, clauses, procedures, or forms included in the Directive or Notice shall be included in solicitations, contracts or modifications issued thereafter, unless a different meaning is expressed in the Directive or Notice.

(b) Compliance with a revision to this Regulation shall be in accordance with the TD or TN which contains the revision.

(c) Unless otherwise stated, solicitations which have been issued and bilateral agreements upon which negotiations have been completed prior to the receipt of new or revised contract clauses need not be amended if the amendment would delay the acquisition action.

1201.270-4 **Numbering.**

TAR Directives and Notices will be numbered consecutively on a calendar year basis beginning with number 1 prefixed by the last two digits of the calendar year, e.g., 84-1; 84-2; 84-3, etc.

Subpart 1201.3—Agency Acquisition Regulations

1201.303 **Publication and codification.**

(a) The TAR is codified as Chapter 12 in Title 48, Code of Federal Regulations, Parts 1201 through 1285.

(b) Public participation in promulgation of the TAR shall be in the same manner as specified for the FAR in FAR 1.501.

1201.303-70 **Administration regulations.**

Administration regulations implementing or supplementing the TAR will be included as separate appendices to 48 CFR Chapter 12 as follows:

OST—Office of the Secretary
FAA—Federal Aviation Administration
USCG—United States Coast Guard
FHWA—Federal Highway Administration
NHTSA—National Highway Traffic Safety Administration
FRA—Federal Railroad Administration
UMTA—Urban Mass Transportation Administration
SLSDC—Saint Lawrence Seaway Development Corporation
MARAD—Maritime Administration
RSPA—Research and Special Programs Administration

Supplementary material for which there is no counterpart in the TAR shall be identified using chapter, part, subpart, section, or subsection numbers of 90 and up (e.g., for the U.S. Coast Guard, whose assigned acronym is "USCG", an agency-unique clause pertaining to "Inspection and/or Acceptance" would be designated "USCG 1252.246-90").

1201.304 **Agency control and compliance procedures.**

(a) All administration acquisition regulations, and all TAR Directives and Notices, shall be approved by the Senior Procurement Executive prior to promulgation to assure compliance with FAR Part 1.

(b) Prior to approval submission:

(1) All TAR issuances shall be reviewed by the OST Office of the General Counsel.

(2) Administration aquisition regulations shall be reviewed by appropriate administration counsel.

Subpart 1201.4—Deviations From the FAR

1201.401 **Definition.**

A deviation to the Transportation Acquisition Regulation (TAR) is defined in the same manner as a deviation to the Federal Acquisition Regulation (FAR).

1201.403 **Individual deviations.**

Requests for individual deviations from the FAR and the TAR shall be submitted by the head of the contracting activity (HCA) to the agency head for approval; however, for the Office of the Secretary, the request shall be submitted by the HCA to the Senior Procurement Executive for approval. All such requests shall be coordinated with legal counsel. Requests submitted shall cite the specific part of the FAR or TAR from which it is desired to deviate; shall set forth the nature of the deviation(s); and shall give the reasons for the action requested. The agency head shall transmit copies of approved individual FAR and TAR deviations to the Senior Procurement Executive.

[52 FR 44525, Nov. 19, 1987, as amended at 53 FR 28397, July 28, 1988]

1201.404 Class deviations.

Requests for class deviations to the FAR and TAR shall be submitted to the Senior Procurement Executive for approval. Requests submitted shall include the same type of information as required for individual deviations as prescribed in 1201.403.

1201.470 Deviations to and waivers from the requirements of Departmental Orders related to acquisition.

Requests for such deviations and waivers shall be submitted to the Senior Procurement Executive for approval, unless the specific DOT Order specifies procedures for obtaining waivers or deviations.

Subpart 1201.6—Contracting Authority and Responsibilities

1201.601 General.

In accordance with 49 CFR 1.45(a)(2), the authority and responsibility vested in the Secretary to contract for authorized supplies and services is delegated to the agency heads. Provided it is not inconsistent with the FAR, any authority established at or below the agency head level by this regulation may be redelegated, unless authority to redelegate is specifically withheld.

1201.602 Contracting officers.

The head of the contracting activity (HCA) shall maintain information on the limits of contracting officer authority.

[52 FR 44525, Nov. 19, 1987, as amended at 53 FR 28397, July 28, 1988]

1201.603 Selection, appointment, and termination of appointment.

1201.603-1 General.

The agency head shall select and appoint contracting officers and terminate such appointments. This authority may be altered upon establishment of the "DOT Contracting Officer Warrant Program."

PART 1202—DEFINITIONS OF WORDS AND TERMS

AUTHORITY: Sec. 205(c), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1202.1—Definitions

1202.170 Definitions.

(a) "Department of Transportation" means all of the administrations, including the Office of the Secretary.

(b) "Administration" means the following:

Office of the Secretary (OST)
Federal Aviation Administration
U.S. Coast Guard
Federal Highway Administration
Federal Railroad Administration
National Highway Traffic Safety Administration
Urban Mass Transportation Administration
St. Lawrence Seaway Development Corporation
Maritime Administration
Research and Special Programs Administration

(c) "Head of the agency" (also called "agency head") means the Assistant Secretary for Administration for OST acquisitions; and for acquisitions within their administrations, the Administrators of the Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, Urban Mass Transportation Administration, National Highway Traffic Safety Administration, Maritime Administration, St. Lawrence Seaway Development Corporation, Research and Special Programs Administration, and the Commandant, U.S. Coast Guard, except to the extent that any law or executive order limits the exercise of authority to persons at the Secretarial level. In the latter situation, the Assistant Secretary for Administration shall exercise the authority for the administrations.

(d) "Head of the contracting activity" (HCA) means the following:

In the Office of the Secretary

The Chief, Procurement Division, Washington, DC

In the Federal Aviation Administration

The Director, Acquisition and Materiel Service, Washington, DC

The Director, Alaskan Region, Anchorage, AL

The Director, Western Pacific Region, Los Angeles, CA

The Director, Southern Region, Atlanta, GA

The Director, Northwest Mountain Region, Seattle, WA

The Director, Central Region, Kansas City, MO

The Director, Eastern Region, Jamaica, NY

The Director, Southwest Region, Fort Worth, TX

The Director, Aeronautical Center, Oklahoma City, OK

The Director, FAA Technical Center, Atlantic City, NJ

The Director, New England Region, Burlington, MA

The Director, Great Lakes Region, Des Plaines, IL

In the Coast Guard

Chief, Contract Support Division, Commandant (G-ACS), Washington, DC, for Headquarters and Resident Inspection Offices.

Chief, Procurement Management Division, Commandant (G-FPM), Washington, DC, for other designated Headquarters Units and Commandant (G-CAS-4).

Commander, First Coast Guard District, Boston, MA

Commander, Second Coast Guard District, St. Louis, MO

Commander, Fifth Coast Guard District, Portsmouth, VA

Commander, Seventh Coast Guard District, Miami, FL

Commander, Eighth Coast Guard District, New Orleans, LA

Commander, Ninth Coast Guard District, Cleveland, OH

Commander, Eleventh Coast Guard District, Long Beach, CA

Commander, Thirteenth Coast Guard District, Seattle, WA

Commander, Fourteenth Coast Guard District, Honolulu, HI

Commander, Seventeenth Coast Guard District, Juneau, AL

Superintendent, U.S. Coast Guard Academy, New London, CT

Commander, Maintenance and Logistics Command, Atlantic

Commander, Maintenance and Logistics Command, Pacific

In the Federal Highway Administration

Associate Administrator for Administration, Washington, DC

Federal Lands Highway Program Administrator, Direct Federal Construction Program, Washington, DC

In the Federal Railroad Administration

Director, Office of Procurement, Washington, DC

In the National Highway Traffic Safety Administration

Director, Office of Contracts and Procurement, Washington, DC

In the Urban Mass Transportation Administration

Director, Office of Procurement and Third Party Contract Review, Washington, DC

In the Research and Special Programs Administration

Chief, Acquisition Division, Transportation Systems Center, Cambridge, MA

In the Maritime Administration

Associate Administrator for Administration, Washington, DC

Central Region Director, New Orleans, LA

Western Region Director, San Francisco, CA

Assistant Superintendent for Administration, U.S. Merchant Marine Academy

(e) "Senior Procurement Executive" means that individual formally designated by the Secretary, currently the Director of Acquisition and Grant Management, Office of the Secretary.

(f) "Acquisition executive" means the Deputy Secretary for programs defined as major systems in accordance with OMB Circular A-109 and DOT Order 4200.14A, Major Systems Acquisition Review and Approval.

[52 FR 44528, Nov. 19, 1987, as amended at 53 FR 28398, July 28, 1988]

PART 1203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1203.1—Safeguards

Sec.
1203.101 Standards of conduct.
1203.101-1 General.

Subpart 1203.5—Other Improper Business Practices

1203.502 Subcontractor kickbacks.

Subpart 1203.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1203.602 Exceptions.

Subpart 1203.70—Reporting Suspected Fraud and Improper Business Practices

1203.7000 Policy.

Subpart 1203.71—Contracts Between DOT and Former DOT Employees

1203.7101 Policy.

AUTHORITY: Sec. 205(c) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

SOURCE: 52 FR 44528, Nov. 19, 1987, unless otherwise noted.

Subpart 1203.1—Safeguards

1203.101 Standards of conduct.

1203.101-1 General.

(a) Personnel involved in contracting activities must familiarize themselves with a number of Federal criminal statutes prohibiting certain acts by Government officials or employees and, in varying degrees, special Government employees (as defined in 18 U.S.C. 202), which generally provide, among other things, the following:

(1) *18 U.S.C. 201*: Prohibits the asking, demanding, exacting, soliciting, seeking, acceptance, or receipt of or agreement to accept anything of value for him or herself or for any other person or entity in return for being influenced in the performance or non-performance of their official duties or other conduct of their office. (i.e., "bribes").

(2) *18 U.S.C. 203*: Prohibits compensation for services rendered by any officer, employee, or another, such as partnership income in an accounting firm in relation to any particular matter in which the United States is a party.

(3) *18 U.S.C. 205*: Prohibits acting as an agent or attorney in prosecuting any claim against the United States or before any United States agency in relation to any matter in which the United States is a party, with or without compensation.

(4) *18 U.S.C. 208*: Prohibits personal and substantial participation in any particular matter in which an individual or an individual's spouse, minor child, partner, organization in which the individual serves as an officer, director, trustee, partner, or employee, or potential employer (with whom the individual is negotiating or has an arrangement for future employment) has a financial interest.

(5) *18 U.S.C. 209*: Prohibits receipt of any salary or supplementation of salary (anything of value) from a non-Government source as compensation for services as an officer or employee.

(b) Under 18 U.S.C. 218, a conviction under one of these statutes in relation to a contract makes the contract voidable.

(c) In addition to these statutory provisions, personnel involved in contracting activities must familiarize themselves with the Department's Employee Responsibilities and Conduct regulations in 49 CFR Part 99. These regulations, among other things, set forth standards of employee conduct and prohibit an employee's doing anything which could result in, or create the appearance of having, a conflict of interest.

(d) Personnel involved in contracting activities must be particularly aware of the prohibitions against accepting gifts. In general, contracting personnel must not accept a gift from anyone who has, is seeking, or is likely to seek a contract with the Department. Gifts includes meals (lunches, dinners, etc.), entertainment (theater or sporting event tickets, weekends at private retreats, private cocktail parties, hospitality suites, etc.), and travel expenses (airplane tickets, hotel accommodations, etc.), as well as tangible gifts. The only general exception is gifts of unsolicited advertising or promotional material, such as pens, calendars, or desk toys, that are worth $10 or less.

(e) Refer any questions concerning the matters discussed in this subpart to administration legal counsel.

Subpart 1203.5—Other Improper Business Practices

1203.502 Subcontractor kickbacks.

Contracting officers shall report suspected violations of the Anti-Kickback Act through the head of the contracting activity to administration legal counsel.

Subpart 1203.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1203.602 Exceptions.

The agency head has the authority to authorize an exception to the policy in FAR 3.601. This authority may be redelegated to a level not below the head of the contracting activity for contracts under $25,000. Before an exception is granted in any case, consult administration legal counsel as to the effect of the conflict of interest laws.

Subpart 1203.70—Reporting Suspected Fraud and Improper Business Practices

1203.7000 Policy.

Contracting officers shall report suspected violations of the gratuities clause, anti-trust violations, misrepresentations or violations of the covenant against contingent fees, subcontractor kickbacks, and other suspected fraudulent behavior through normal administrative channels to the Office of Inspector General (J-1), with a copy to General Counsel or the appropriate Chief Counsel.

Subpart 1203.71—Contracts Between DOT and Former DOT Employees

1203.7101 Policy.

(a) Agency head approval is required for all contracts with individuals who have been employed by DOT within the two years prior to the expected date of contract award, and with firms in which such a former DOT employee is a partner, principal officer, majority stockholder, or which is otherwise controlled or predominantly staffed by such former DOT employees.

(b) When current DOT employees are initially contacted by a former DOT official or employee on behalf of him or herself or a contractor in connection with a contract matter, they shall consult with appropriate legal counsel for a determination of impact on the acquisition involved, and to take action, as necessary, regarding violation of post-employment laws.

PART 1204—ADMINISTRATIVE MATTERS

Subpart 1204.2—Contract Distribution

Sec.
1204.202 Agency distribution requirements.

Subpart 1204.6—Contract Reporting

1204.602 Federal Procurement Data System.

Subpart 1204.8—Contract Files

1204.804 Closeout of contract files.
1204.804-5 Detailed procedures for closing out contract files.

Subpart 1204.70—Procurement Requests

1204.7001 General.
1204.7002 Forms.

AUTHORITY: Sec. 205(c), Federal Property and Administrative Services Act; as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

SOURCE: 52 FR 44529, Nov. 19, 1987, unless otherwise noted.

Subpart 1204.2—Contract Distribution

1204.202 Agency distribution requirements.

The contracting officer shall distribute one copy of all contracts which are for the acquisition of personal property (as defined at FAR 45.601) to the property management organization that has responsibility for recordkeeping and control of such property. The contracting officer shall also distribute one copy of all contract modifications which change the basic contract so that it includes the acquisition of personal property, to the applicable property management organization.

Subpart 1204.6—Contract Reporting

1204.602 Federal Procurement Data System.

(a) The DOT Contract Information System (CIS) collects the information required to comply with the reporting required for the Federal Procurement Data System (FPDS). Each contracting officer is responsible for proper reporting of contracts under his/her cognizance.

(b) DOT Order :340.5, Contract Information System, provides detailed reporting instructions.

(c) The CIS Data Input Form (DOTF.4220.11) shall be used to provide acquisition records and statistics in lieu of the SF 279, Individual Contract Action Report (over $25,000). A copy of each data input form affecting the contract shall be included in the contract file. Those administrations which use automation for reporting the information normally included on the DOTF.4220.11, shall ensure that this information is readily available 'n the contract office. The FPDS Summary of Contract Actions of $10,000 or Less (SF 281) shall be used to summarize contract actions of $25,000 or less.

[52 FR 44529, Nov. 19, 1987, as amended at 53 FR 28398, July 28, 1988]

Subpart 1204.8—Contract Files

1204.804 Closeout of contract files.

1204.804-5 Detailed procedures for closing out contract files.

(a) In addition to those procedures set forth in FAR 4.804-5, the contracting officer shall, before final payment is made under a cost-reimbursement type contract, verify the allowability, allocability, and reasonableness of costs claimed. Verification of total costs incurred shall be obtained in the form of a final audit certification, unless the contract is below $1,000,000, in which case the contracting officer may choose to waive the audit certification requirement (with respect to both direct costs and indirect costs) provided that she or he determines in writing that the use of quick-closeout procedures is appropriate in accordance with paragraph (b) of this section. Similar verification of actual costs must be made for fixed-price contracts when cost incentives or price redeterminations are involved.

(b) DOT contracting officers may utilize quick-closeout procedures on cost-type contracts not exceeding $1,000,000 provided the stipulations at FAR 42.708(a) (1) through (3) are met and:

(1) All terms and conditions of the contract have been met satisfactorily;

(2) Invoiced costs are consistent with original cost estimates;

(3) There is no suspected fraud or wrongdoing; and

(4) The Contracting Officer determines in writing, that the use of this procedure will be beneficial to the Government.

[53 FR 28398, July 28, 1988]

Subpart 1204.70—Procurement Requests

1204.7001 General.

(a) Procurement requests will be prepared and submitted to the contracting office in accordance with administration procedures.

(b) Except in unusual circumstances the contracting office will not issue solicitations until an approved procurement request, containing a certifica tion that funds are available, has been received. However, the contracting office may take all necessary actions up to the point of contract award prior to the receipt of the approved procurement request certifying that funds are available when:

(1) Such action is necessary to meet critical program schedules;

(2) It has been established that program authority has been issued and that funds to cover the acquisition will be available prior to the date set for contract award or contract modification;

(3) A person at a level above the contracting officer authorizes such action prior to the issuance of the solicitation, and the contract file is properly documented; and

(4) The solicitation document clearly indicates that the award is subject to the availability of funds.

(c) The procurement request shall be assigned within the contracting office to an individual who, if not the contracting officer, will be responsible to the contracting officer for conducting the business aspects of the transaction. This individual shall review the request to ensure that it complies with the FAR and this Regulation and that the information contained in the request is in sufficient detail to prepare presolicitation and solicitation documents. The contracting officer, or other designated individual in the contracting office, shall discuss uncertain requirements or inconsistencies in the procurement request with the initiator of the request and obtain clarification prior to taking any further action.

1204.7002 Forms.

Procurement Request Forms DOT F.4200.1 and DOT F.4200.2 (continuation sheet) shall be used to request the acquisition of supplies, services, or construction and may be used to request items obtained through FEDSTRIP, MILSTRIP, or similar single- or multi-line requisitioning methods.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 1205—PUBLICIZING CONTRACT ACTIONS

Subpart 1205.1—Dissemination of Information

Sec.
1205.102 Availability of solicitations.

Subpart 1205.2—Synopses of Proposed Contract Actions

1205.207 Preparation and transmittal of synopses.

Subpart 1205.3—Synopses of Contract Awards

1205.303 Announcement of contract awards.

Subpart 1205.4—Release of Information

1205.402 General public.
1205.402-70 Furnishing additional contract information to the general public.

Subpart 1205.5—Paid Advertisements

1205.502 Authority.

AUTHORITY: Sec. 205(c), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)), 48 CFR 1.301; 49 CFR 1.59.

SOURCE: 52 FR 44530, Nov. 19, 1987, unless otherwise noted.

Subpart 1205.1—Dissemination of Information

1205.102 Availability of solicitations.

Notwithstanding the limitations of FAR 5.102, Availability of solicitations, it is the Department's policy to provide a copy of any solicitation to all who submit a request for a copy of the solicitation.

Subpart 1205.2—Synopses of Proposed Contract Actions

1205.207 Preparation and transmittal of synopses.

Numbered notes: The Civilian Agency Acquisition Council has granted a class deviation to DOT exempting the Department from the requirements of FAR 5.207(e)(3). The use of Numbered Note 22 is prohibited in DOT synopses of proposed contract actions. For those actions requiring a market survey to support a justification for other than full and open competition, the survey shall be conducted separately from and well in advance of the synopsis of the proposed contract action. In these instances, the market survey must be performed as part of and in support of the acquisition planning which supports the determination to contract with less than full and open competition. In addition to the requirements of FAR 5.207, and in lieu of Numbered Note 22, the Contracting Officer shall use terminology substantially as follows: "This contract action is for supplies or services for which the Government intends to solicit and negotiate only with (*name of contractor*) under authority of FAR (*insert appropriate authority from FAR 6.302*). A market survey was conducted on (*date*), and the results of this survey support our determination to solicit and negotiate with only one firm.

Subpart 1205.3—Synopses of Contract Awards

1205.303 Announcement of contract awards.

Contracts valued at $200,000, or more shall not be executed, distributed, nor any information released to any source outside of DOT that the contract has been approved until the Director, Office of Public Information, has advised the contract activity that the contract can be released. The contracting officer shall prepare and submit a public and Congressional notification form, entitled "Proposed Award of Contract or Grant," for the purpose of obtaining this release.

[53 FR 28398, July 28, 1988, as amended at 53 FR 34301, Sept. 6, 1988]

Subpart 1205.4—Release of Information

1205.402 General public.

1205.402-70 Furnishing additional contract information to the general public.

(a) In addition to publicizing proposed contracts and contract awards in the Commerce Business Daily, it is DOT policy to furnish the general public, upon request, the following information on proposed contracts and contract awards.

(1) The names of firms invited to submit bids or proposals;

(2) The names of firms which attended pre-proposal briefing conferences when held;

(3) After the award of contracts, names of firms which submitted proposals; and

(4) After the date established for receipt of bids, names of firms which submitted bids.

(b) Exceptions to this policy will be permitted only when the head of the contracting activity determines that the disclosure of such information would be prejudicial to the interests of DOT.

[53 FR 28398, July 28, 1988]

Subpart 1205.5—Paid Advertisements

1205.502 Authority.

Authority to approve publication of paid advertisements in newspapers is delegated to the head of the contracting activity.

PART 1206—COMPETITION REQUIREMENTS

Sec.

1206.003 Definitions.

Subpart 1206.1—Full and Open Competition

1206.102 Use of competitive procedures.

Subpart 1206.3—Other Than Full and Open Competition

1206.302 Circumstances permitting other than full and open competition.
1206.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.
1206.302-2 Unusual and compelling urgency.
1206.302-7 Public interest.
1206.303 Justifications.
1206.303-1 Requirements.
1206.304 Approval of the justification.
1206.305 Availability of the justification.

Subpart 1206.5—Competition Advocates

1206.501 Requirement.

AUTHORITY: 41 U.S.C. 253 *et. seq.*, 10 U.S.C. 2301 *et. seq.*, 41 U.S.C. 403 *et. seq.*, as amended by Pub. L. 98-369.

SOURCE: 52 FR 44531, Nov. 19, 1987, unless otherwise noted.

1206.003 Definitions.

"*Head of the procuring activity*", as used in this part shall be synonymous with "head of the agency" as defined in 1202.170(c).

"*Procuring activity*", as used in this part, shall be synonymous with "Administration" as defined in 1202.170(b).

Subpart 1206.1—Full and Open Competition

1206.102 Use of competitive procedures.

(a) Contracting officers shall ensure that the special competition requirements for acquiring automatic data processing and telecommunications equipment, software, or services are met. These requirements currently are set forth in the Federal Information Resources Management Regulation (FIRMR), Chapter 201 of Title 41, Code of Federal Regulation.

(b) Prior to proceeding with a contract award, contracting officers shall review all competitive solicitations which produce only one offer from responsible sources. The contracting officer shall attempt to ascertain the reasons for the lack of response and shall place a written statement in the contract file documenting his conclusions regarding the lack of competition under the solicitation. The contracting officer shall provide a copy of the statement to the procuring activity competition advocate and the Senior Competition Advocate. Should the contracting officer conclude that the solicitation was structured or con-

best copy available
pages tightly bound

ducted in a manner which did not provide for full and open competition, the contracting officer shall either cancel the solicitation or shall proceed to justify the award under FAR Subpart 6.3. See FAR 14.404-1 when contemplating cancellation of sealed bid solicitations after bid opening.

[52 FR 44531, Nov. 19, 1987, as amended at 53 FR 28399, July 28, 1988]

Subpart 1206.3—Other Than Full and Open Competition

1206.302 Circumstances permitting other than full and open competition.

1206.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

Unsolicited proposals with an estimated value in excess of $25,000, may be considered for award under FAR 6.302-1 only after they are reviewed and approved by the Senior Competition Advocate. This approval is in addition to that approval stipulated at 1206.304. For unsolicited proposals with an estimated value in excess of $200,000, this approval may be obtained through the Department's Prenotification Process implemented by DOT Order 4200.16, Prenotification Review of Proposed Acquisition and Assistance Actions and Related Matters.

[52 FR 44531, Nov. 19, 1987, as amended at 53 FR 28399, July 28, 1988]

1206.302-2 Unusual and compelling urgency.

The contracting officer shall ensure that the justification supporting the use of this authority is approved prior to contract award unless immediate loss of life or property, or other equally compelling circumstances, are involved. When such a compelling circumstance exists, the contracting officer should inform the approving official of the action at the earliest opportunity, preferably before award. In cases involving approval after award, the justification required by FAR 6.303 shall contain a summary of facts justifying approval after award, including a statement of the number of days that were available to execute the justification prior to award.

1206.302-7 Public interest.

(a) The operating administrations shall coordinate and process all requests for a Secretarial determination, under this authority, through the Senior Competition Advocate. The Senior Competition Advocate shall review the request and shall prepare a recommendation to the Secretary regarding the merits of the request.

(b) The request must be submitted by the head of the procuring activity.

(c) All supporting documentation and a proposed determination and findings must accompany the request.

1206.303 Justifications.

1206.303-1 Requirements.

The requirements of 1206.302-2 must be met for justifications approved after contract award.

1206.304 Approval of the justification.

(a) The justification for other than full and open competition shall be approved by the following officials;

(1) For proposed acquisitions estimated between $25,000 and $100,000:

(i) *For all Administrations except the Coast Guard:* The individuals cited at 1202.170(d) under the definition of "Head of Contracting Activity."

(ii) *For the Coast Guard:* The individuals cited at 1202.170(d) under the definition of "Head of Contracting Activity," excluding the District Commanders. The justifications for the units listed below shall be approved by the Commanding Officer or the Commander (redelegable to the individual of that unit with comptroller authority):

(A) Commanding Officer, U.S. Coast Guard Aircraft Repair and Supply Center, Elizabeth City, North Carolina.

(B) Commanding Officer, U.S. Coast Guard Supply Center, Brooklyn, New York.

(C) Commanding Officer, U.S. Coast Guard Training Center, Cape May, New Jersey.

(D) Commanding Officer, U.S. Coast Guard Training Center, Petaluma, California.

(E) Commanding Officer, U.S. Coast Guard Yard, Baltimore, Maryland.

(F) Commanding Officer, Electronics Engineering Center, Wildwood, New Jersey.

(G) Commander, Coast Guard Activities, Europe, London.

(H) Commanding Officer, U.S. Coast Guard Reserve Training Center, Yorktown, Virginia.

(I)—(J) [Reserved]

(K) Commanding Officer, U.S. Coast Guard Pay and Personnel Center, Topeka, Kansas.

(L) Commanding Officer, U.S. Coast Guard Resident Inspection Office, Middletown, Rhode Island.

(M) Commanding Officer, U.S. Coast Guard Resident Inspection Office, Bath, Maine.

(N) Commanding Officer, U.S. Coast Guard Resident Inspection Office, Lockport, Louisiana.

(O) Commanding Officer, U.S. Coast Guard Resident Inspection Office, Seattle, Washington.

(P) Commanding Officer, U.S. Coast Guard, Aircraft Program Office, Grand Prairie, Texas.

(Q) Commanding Officer, U.S. Coast Guard Air Station, Washington National Airport, Washington, D.C.

(R) Commanding Officer, U.S. Coast Guard Aviation Training Center, Mobile, Alabama.

(S) Commanding Officer, U.S. Coast Guard Station, Alexandria, Virginia.

(T) Commanding Officer, U.S. Coast Guard COMDAC Support Facility, Portsmouth, Virginia.

(U) Commanding Officer, U.S. Coast Guard Central Regional Recruiting Center, Hazelwood, Missouri.

(V) Commanding Officer, U.S. Coast Guard Eastern Regional Recruiting Center, Norfolk, Virginia.

(W) Commanding Officer, U.S. Coast Guard Western Regional Recruiting Center, Seattle, Washington.

(2) For proposed acquisitions over $100,000 but not exceeding $1,000,000: The procuring activity's competition advocate.

(3) For proposed acquisitions over $1,000,000 but not exceeding $10,000,000: The procuring activity's competition advocate and the following:

(i) The Assistant Secretary for Administration for OST Acquisitions;

(ii) The Administrator or Deputy Administrator; the Commandant or Vice Commandant for Acquisitions of their administrations.

(4) For proposed acquisitions over $10,000,000: The approval authorities cited in 1206.304(a)(3) and the following:

(i) The Senior Procurement Executive.

(ii) The Assistant Secretary for Administration in the absence of the Senior Procurement Executive.

(b) The approval authorities cited in 1206.304(a) may not be delegated. With respect to the approval authorities cited in 1206.304(a), individuals acting in the place of these approving officials must also meet the qualification requirements stipulated by the Competition in Contracting Act of 1984 and also, for the Coast Guard, the qualification requirements stipulated by Title 10 of the U.S. Code.

(c) Legal review shall be obtained when appropriate.

(d) In addition to the approvals stipulated in 1206.304(a), class justifications for other than full and open competition for requirements with an estimated value exceeding $25,000 must be reviewed and approved by the Senior Competition Advocate. A copy of the CBD synopsis, or a copy of the synopsis waiver, should be attached to the justification.

[52 FR 44531, Nov. 19, 1987, as amended at 53 FR 28399, July 28, 1988]

1206.305 Availability of the justification.

The contracting officer shall forward a copy of all approved justifications for other than full and open competition, including supporting documentation, to the Senior Competition Advocate within 10 working days of approval. A copy of the CBD synopsis, or a copy of the synopsis waiver, should be attached to the justification.

Subpart 1206.5—Competition Advocates

1206.501 Requirement.

(a) The Secretary shall appoint a Senior Competition Advocate (SCA) and procuring activity competition advocates.

(b) The SCA shall—

(1) Act as the agency competition advocate;

(2) Oversee and coordinate the activities of the competition advocates in the operating administrations;

(3) Act as the Secretary's principal advisor regarding competition issues.

(c) The head of each operating administration shall recommend to the Secretary, in writing, a procuring activity competition advocate for the administration. The advocate must be a member of the Senior Executive Service or a flag officer. The head of the operating administration shall forward the recommendation letter through the SCA.

(d) The head of the operating administration may appoint competition advocates in headquarters and field contracting offices to assist the procuring activity competition advocate. Such individuals shall not have approval authority under 1206.304.

(e) The head of each operating administration shall make available professional contracting and engineering staff to support the competition advocates.

PART 1207—ACQUISITION PLANNING

Subpart 1207.1—Acquisition Plans

Sec.
1207.102 Policy.

Subpart 1207.3—Contractor Versus Government Performance

1207.302 General.
1207.305 Solicitation provision and contract clause.
1207.307 Appeals.
1207.370 A-76 preward surveys.

Subpart 1207.4—Equipment Lease or Purchase

1207.401 Acquisition considerations.

AUTHORITY: Sec. 205(c), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

SOURCE: 52 FR 44532, Nov. 19, 1987, unless otherwise noted.

Subpart 1207.1—Acquisition Plans

1207.102 Policy.

The Department has implemented its acquisition planning system in DOT Orders in the 4200 Series, which are available for inspection in DOT contracting offices. This system meets the criteria prescribed in FAR Subpart 7.1 covering major projects. Planning for smaller projects is the responsibility of the agency head.

Subpart 1207.3—Contractor Versus Government Performance

1207.302 General.

The Department's implementation of OMB Circular A-76 and FAR Subpart 7.3 is set forth in DOT Order 4400.2C, Performance of Commercial Activities, which is available for inspection in DOT Contracting Offices.

1207.305 Solicitation provision and contract clause.

(a)(1) The contracting officer shall insert the clause at 1252.207-70, Implementation of Right of First Refusal of Employment, in solicitations and contracts which include FAR clause 52.207-3, Right of First Refusal of Employment, and in contracts in which required contractor performance causes Federal employees to be adversely affected. This clause is required in solicitations and contracts as stipulated herein, until that time when the FAR specifies contractual provisions for the implementation of right of first refusal.

(2) At their own discretion, contracting officers may use the clause with its alternate in lieu of the basic clause.

(b) Contracting officers shall include in all A-76 solicitations for sealed bids a preaward survey clause substantially the same as that specified at 1252.207-71, Financial and Technical Ability. Some negotiated and two-step forms of contracting use technical proposals to determine how well offerors understands the statement of work. The clause stipulated at 1252.207-71, Financial and Technical Ability, may be adapted and included as evaluation factors in negotiated solicitations.

[52 FR 44532, Nov. 19, 1987, as amended at 53 FR 28399, July 28, 1988]

1207.307 Appeals.

The Department's appeals procedures required by OMB Circular A-76 and FAR 7.307 are set forth in DOT Order 4400.2C.

1207.370 A-76 preaward surveys.

When soliciting under sealed bid methodology, contracting officers shall normally conduct a preaward survey, as described in Chapter 6 of the Supplement to A-76, with the contractor with the lowest responsive bid, if the contractor's adjusted cost on the cost comparison form is less than the Government's costs. However, a preaward survey will not be conducted when the contractor alleges a mistake in bid and is allowed to withdraw the bid for obvious reasons in accordance with FAR 14.406. If the contractor which submitted the low bid is not determined to be responsible, the next contractor whose adjusted costs are lower than the Government's costs shall normally be subject to a preaward survey.

Subpart 1207.4—Equipment Lease or Purchase

1207.401 Acquisition considerations.

The evaluation required by FAR 7.401 shall be documented whenever contracting for the lease of equipment.

PART 1208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 1208.1—Excess Personal Property

Sec.
1208.102 Policy.

Subpart 1208.4—Ordering From Federal Supply Schedules

1208.401 General.

Authority: Sec. 205(c), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)), 48 CFR 1.301, 49 CFR 1.59.

Source: 52 FR 44533, Nov. 19, 1987, unless otherwise noted.

Subpart 1208.1—Excess Personal Property

1208.102 Policy.

DOT Administrations shall use excess personal property as the first source of supply when practicable. The HCA shall ensure that procurement requests to acquire personal property are reviewed by the appropriate property management organization to determine if requirements are available from excess sources.

Subpart 1208.4—Ordering From Federal Supply Schedules

1208.401 General.

Contracting officers shall consult the Federal Information Resources Management Regulation (FIRMR) when ordering automatic data processing (ADP) or telecommunications equipment and services under multiple award schedules. Special procedures for ordering such equipment and services are set forth in the FIRMR, Chapter 201 of Title 41, Code of Federal Regulations.

PART 1209—CONTRACTOR QUALIFICATIONS

Subpart 1209.1—Responsible Prospective Contractors

Sec.
1209.104 Standards.

Subpart 1209.3—First Article Testing and Approval

1209.302 General.

Subpart 1209.4—Debarment, Suspension, and Ineligibility

1209.402 Policy.

Sec.

Subpart 1209.5—Organizational Conflicts of Interest

1209.503 Waiver.
1209.508 Solicitation provisions and contract clause.
1209.508-1 Solicitation provisions.

AUTHORITY: Sec. 205(c), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)); 48 CFR 1.301; 49 CFR 1.59.

SOURCE: 52 FR 44533, Nov. 19, 1987, unless otherwise noted.

Subpart 1209.1—Responsible Prospective Contractors

1209.104 Standards.

DOT Form DOTF 4220.1, Determination of Prospective Contractor Responsibility, may be used to document the determination of a prospective contractor's responsibility.

Subpart 1209.3—First Article Testing and Approval

1209.302 General.

The procurement request initiator shall prepare a written statement addressing the factors enumerated in FAR 9.302 whenever first article testing and approval is required. This statement shall be forwarded with the procurement request.

Subpart 1209.4—Debarment, Suspension, and Ineligibility

1209.402 Policy.

DOT procedures to implement the policy of FAR 9.402 are set forth in DOT Order 4200.5 "Government-Wide Debarment, Suspension and Ineligibility."

Subpart 1209.5—Organizational Conflicts of Interest

1209.503 Waiver.

In the rare instances, when necessary, the agency head is authorized to approve waivers in accordance with FAR 9.503. This authority may not be redelegated below the level of HCA.

1209.508 Solicitation provisions and contract clause.

1209.508-1 Solicitation provisions.

In additon to the provision discussed at FAR 9.508-1 (used where appropriate), the contracting officer may insert the provision at 1252.209-71 "Disclosure of Conflicts of Interest" in solicitations for negotiated acquisitions (see also 1215.407(a)).

PART 1210—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.
1210.004 Selecting specifications or descriptions for use.
1210.004-70 Brand name products or equal.
1210.004-71 Limits on the use of brand name or equal purchase descriptions.
1210.004-72 Solicitations, brand name or equal descriptions.
1210.004-73 Offer evaluation and award, brand name or equal descriptions.
1210.007 Deviations.
1210.011 Solicitation provisions and contract clauses.
1210.011-70 Solicitation provision.

AUTHORITY: Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

SOURCE: 52 FR 44533, Nov. 19, 1987, unless otherwise noted.

1210.004 Selecting specifications or descriptions for use.

1210.004-70 Brand name products or equal.

(a) *General.* Consistent with the policy stated in FAR 10.004(b)(2), DOT acquisitions will generally not be based on a specifically identified product or feature(s) thereof. However, under unusual circumstances such an approach may be used as described below.

(b) *Citing brand name products.* Brand name or equal purchase descriptions shall cite all brand name products known to be acceptable and of current manufacture.

(c) *Specifying essential characteristics.* (1) Brand name or equal purchase descriptions shall specify each physical or functional characteristic of the product that is essential to the intended use. Failure to do so may result in a defective solicitation and the necessity to resolicit the requirement. (See 1210.004-73) Care must be taken to avoid specifying characteristics that cannot be shown to materially affect the intended end use and which unnecessarily restrict competition.

(2) When describing essential characteristics, permissible tolerances should be indicated. Avoid specifying a characteristic (e.g. a specific dimension) of a brand name product unless it is essential to the Government's need. The contracting officer must be able to justify the requirement.

1210.004-71 Limits on the use of brand name or equal purchase descriptions.

(a) *General.* The use of brand name or equal purchase descriptions in solicitations is intended to promote competition by encouraging the offering of products that are equal in all material respects to brand name products cited in such descriptions. Identification by brand name does not indicate a preference for the products mentioned but indicates the quality and characteristics of products that will meet the Government's needs. Where a component of an item is described in the solicitation by a brand name or equal purchase description and the contracting officer determines that application of the provision at 1252.210-71 would be impracticable, the requirement to include the entry described in 1210.004-72(a) shall not apply. If the provision is included in the solicitation for other reasons, there also shall be included in the solicitation a statement to identify either the component parts (described by brand name or equal descriptions) to which the provision applies or those to which it does not apply. This also applies to accessories related to an end item where a brand name or equal purchase description of the accessories is a part of the description of an end item. Brand name or equal descriptions shall not be used to acquire a particular product under the guise of competitive acquisition to the exclusion of other products that would meet the actual needs.

(b) *Small purchases.* In small purchases within the open market limitations, brand name policies and procedures shall be applicable to the extent practical.

(c) *Approval required.* A statement approved at least one level above the contracting officer shall be included in the contract file to justify use of brand name products or brand name or equal purchase descriptions.

1210.004-72 Solicitations, brand name or equal descriptions.

(a) An entry substantially as follows shall be prominently inserted in the item listing after each item or component part of an end item to which a brand name or equal purchase description applies.

Bidding on: ____________________
Manufacturer's Name: ____________
Brand: _________________________
No.: ___________________________

(b) Because bidders frequently overlook the requirements of the provision at 1252.210-70 "Brand Name or Equal," the following note shall be inserted in the item listing after each brand name or equal item (or component part), or at the bottom of each page, listing several such items, or in a manner that may otherwise direct the offeror's attention to this clause.

> Offerors offering other than brand name items identified herein should furnish with their offers adequate information to ensure that a determination can be made as to equality of the product(s) offered (see the provision "brand name or equal" set forth in section 1252.210-70 of the Transportation Acquisition Regulation).

(c) If offeror samples are requested for brand name or equal acquisitions, the above notice shall not be included in the solicitation.

1210.004-73 Offer evaluation and award, brand name or equal descriptions.

An offer may not be rejected for failure of the offered product to equal a characteristic of a brand name product if it was not specified in the brand name or equal description. However, if it is clearly established that the unspecified characteristic is essential to the intended end use, the solicitation is defective and no award may be made. In such cases, the contracting officer should resolicit the requirement, using a purchase description that sets forth the essential characteristics.

1210.007 Deviations.

The head of the contracting activity is the designated official responsible for ensuring that Federal specifications are used and exceptions and deviations are justified in accordance with FAR 10.007(a).

1210.011 Solicitation provisions and contract clauses.

1210.011-70 Solicitation provision.

The contracting officer shall include the provision at 1252.210-70. "Brand Name or Equal" in solicitations for which a brand name or equal purchase description is used.

PART 1212—CONTRACT DELIVERY OR PERFORMANCE

AUTHORITY: Sec. 205(c), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1212.70—Delays

1212.7001 Delays.

The contracting officer shall insert the clause at 1252.212-71 "Notice of Delay" in all DOT contracts except fixed-price construction solicitations and contracts. The notice requirements may be modified for short-term contracts, as appropriate.

[52 FR 44534, Nov. 19, 1987]

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 1213.1—General

Sec.
1213.106 Competition and price reasonableness.
1213.106-70 Data to support small purchases over $1,000.
1213.107 Solicitation and evaluation of quotations.

Subpart 1213.2—Blanket Purchase Agreements

1213.2 General.
1213.203 Establishment of blanket purchase agreements.
1213.203-1 General.

Subpart 1213.3—Fast Payment Procedure

1213.302 Conditions for use.

Subpart 1213.4—Imprest Fund

1213.403 Agency responsibilities.
1213.404 Conditions for use.
1213.405 Procedures.

Subpart 1213.5—Purchase Orders

1213.505 Purchase order and related forms.
1213.505-2 Agency order forms in lieu of Optional Forms 347 and 348.
1213.505-3 Standard Form 44, Purchase Order-Invoice-Voucher.

AUTHORITY: Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

SOURCE: 52 FR 44534, Nov. 19, 1987, unless otherwise noted.

Subpart 1213.1—General

1213.106 Competition and price reasonableness.

1213.106-70 Data to support small purchases over $1,000.

Form DOT F 4230.1, Small Purchase Summary, may be used to satisfy documentation requirements of FAR 13.106(c).

1213.107 Solicitation and evaluation of quotations.

Standard Form 18, Request For Quotations, shall be used to obtain written quotations as prescribed in FAR 13.107(a) unless an administration equivalent form has been authorized for use by the Senior Procurement Executive. (See FAR 53.103).

Subpart 1213.2—Blanket Purchase Agreements

1213.201 General.

The head of the contracting activity may require that only contracting officers make purchases under a blanket purchase agreement (BPA).

1213.203 Establishment of blanket purchase agreements.

1213.203-1 General.

Optional Form 347, Order for Supplies or Services, shall be used for BPAs unless an administration equivalent form has been authorized for use by the HCA.

[53 FR 28399, July 28, 1988]

Subpart 1213.3—Fast Payment Procedure

1213.302 Conditions for use.

The agency head may establish higher dollar limitations than those specified at FAR 13.302(a) for specified activities or items.

Subpart 1213.4—Imprest Fund

1213.403 Agency responsibilities.

(a) Regulations governing the use and administration of Imprest Funds within the Department are contained in DOT Order 2770.7A, Imprest Fund Manual.

(b) Heads of contracting activities (HCAs) shall establish procedures for designation of personnel authorized to approve requisitions and make purchases using imprest funds. HCAs may require that only contracting officers may approve requisitions using imprest funds.

1213.404-1 Conditions for use.

The Department has implemented its imprest fund procedures and policy in DOT Order 2770.7A, Imprest Fund Manual.

1213.405 Procedures.

(a) The individual making an approved purchase from the imprest fund shall be responsible for compliance with the documentation requirements of FAR 13.405(f) and DOT Order 2770.7A, Chapter 6.

(b) The individual having acquisition authority to approve purchases from the imprest fund shall be responsible for checking the authorized purchase requisition for compliance with the internal control requirements mandated by DOT Order 2770.7A, Chapter 6, Paragraph 2a.

Subpart 1213.5—Purchase Orders

1213.505 Purchase order and related forms.

1213.505-2 Agency order forms in lieu of Optional Forms 347 and 348.

Optional Forms 347 and 348 shall be used as prescribed in FAR 13.505 unless an administration equivalent form has been authorized for use by the HCA. Exceptions may be granted, on a case by case basis, in order to accommodate computer-generated purchase order forms. Exception approval for overprinting (FAR 53.104) is not needed.

[52 FR 44534, Nov. 19, 1987, as amended at 53 FR 28399, July 28, 1988]

1213.505-3 Standard Form 44, Purchase Order-Invoice-Voucher.

(a) In addition to the procedures in FAR 13.505-3; DOT Order 4230.2 Standard Form 44 (SF 44), Purchase Order-Invoice-Voucher contains guidance on the use of Standard Form 44.

(b) Agency heads are responsible for establishing procedures to control the use of Standard Form 44 and accounting for all purchases made using the form, including:

(1) Maintenance of a list of designated individuals authorized to make purchases using the form;

(2) Controls for issuance of the form to authorized individuals; and

(3) Review of purchase transactions using the form to assure compliance with authorized procedures.

PART 1214—SEALED BIDDING

Subpart 1214.2—Solicitation of Bids

Sec.

1214.201 Preparation of invitations for bids.
1214.201-1 Uniform contract format.
1214.202 General rules for solicitation of bids.
1214.202-4 Bid samples.
1214.202-5 Descriptive literature.
1214.205 Solicitation mailing lists.
1214.205-1 Establishment of lists.
1214.208 Amendment of invitations for bids.

Subpart 1214.3—Submission of Bids

1214.302 Bid submission.

Subpart 1214.4—Opening of Bids and Award of Contract

1214.406 Mistakes in bids.
1214.406-3 Other mistakes disclosed before award.
1214.406-4 Mistakes after award.
1214.408 Information to bidders.
1214.408-2 Award of classified contracts.
1214.470 Revalidation of requirements (sealed bidding).

AUTHORITY: Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

SOURCE: 52 FR 44535, Nov. 19, 1987, unless otherwise noted.

Subpart 1214.2—Solicitation of Bids

1214.201 Preparation of invitations for bids.

1214.201-1 Uniform contract format.

In those cases where the uniform contract format need not be used, the contract still should be structured to conform to the various uniform contract format sections as closely as is practicable.

1214.202 General rules for solicitation of bids.

1214.202-4 Bid samples.

The justification required by FAR 14.202-4(d) shall be prepared by the requiring activity and approved, in writing, by the contracting officer.

1214.202-5 Descriptive literature.

The justification required by FAR 14.202-5(c) shall be prepared by the requiring activity and approved, in writing, by the contracting officer.

1214.205 Solicitation mailing lists.

1214.205-1 Establishment of lists.

Requests for supplemental information shall be attached to the Standard Form 129 and fowarded to potential suppliers for completion.

1214.208 Amendment of invitations for bids.

Amendments which are substantive in nature shall be subject to the same review process as was required for issuance of the solicitation.

Subpart 1214.3—Submission of Bids

1214.302 Bid submission.

As permitted by FAR 14.302(b), a telegraphic bid may be communicated by means of a telephone call to the designated office.

Subpart 1214.4—Opening of Bids and Award of Contract

1214.406 Mistakes in bids.

1214.406-3 Other mistakes disclosed before award.

The head of the contracting activity is authorized to make the determinations under FAR 14.406-3 (a), (b), (c), and (d). This authority may not be redelegated. Any doubtful case under FAR 14.406-3 may be forwarded for advance decision to the Comptroller General, with a copy to the senior procurement executive.

[52 FR 44535, Nov. 19, 1987, as amended at 53 FR 28399, July 28, 1988]

1214.406-4 Mistakes after award.

The contracting officer shall make the determination required by FAR 14.406-4(b) after coordination with legal counsel.

1214.408 Information to bidders.

1214.408-2 Award of classified contracts.

Each administration having access to classified information during the acquisition process shall comply with appropriate security procedures.

1214.470 Revalidation of requirements (sealed bidding).

In every case where a procurement action has been in process for more than 1 year from the date of the Procurement Request, the contracting officer shall revalidate user needs which justify the procurement action prior to contract award. The revalidation must be accomplished immediately prior to award.

[52 FR 44535, Nov. 19, 1987, as amended at 53 FR 28399, July 28, 1988]

PART 1215—CONTRACTING BY NEGOTIATION

Subpart 1215.1—General Requirements for Negotiation

Sec.
1215.106 Contract clauses.
1215.106-70 Key personnel and facilities.
1215.170 Pre-contract costs.

Subpart 1215.4—Solicitation and Receipt of Proposals and Quotations

1215.405 Solicitations for information or planning purposes.
1215.406 Preparing requests for proposals (RFPs) and requests for quotations (RFQs).
1215.406-1 Uniform contract format.
1215.407 Solicitation provisions.
1215.408 Issuing solicitations.
1215.411 Receipt of proposals and quotations.
1215.413 Disclosure and use of information before award.

Subpart 1215.5—Unsolicited Proposals

1215.502 Policy.
1215.506 Agency procedures.

Sec.

Subpart 1215.6—Source Selection

1215.605 Evaluation factors.
1215.612 Formal source selection.

Subpart 1215.8—Price Negotiation

1215.803 General.
1215.804 Cost or pricing data.
1215.804-3 Exemptions from or waiver of submission of certified cost or pricing data.
1215.805 Proposal analysis.
1215.805-4 Technical analysis.
1215.805-5 Field pricing support.
1215.807 Prenegotiation objectives.
1215.807-70 Contents of prenegotiation memorandum.
1215.808 Price negotiation memorandum.
1215.810 Should-cost analysis.

Subpart 1215.9—Profit

1215.902 Policy.
1215.905 Profit-analysis factors.
1215.905-70 Methods.
1215.905-71 Profit/fee objective for noncommercial enterprises.

Subpart 1215.70—Revalidation of Requirements (Negotiated)

1215.7000 Policy.

AUTHORITY: Sec. 205(c) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

SOURCE: 52 FR 44536, Nov. 19, 1987, unless otherwise noted.

Subpart 1215.1—General Requirements for Negotiation

1215.106 Contract clauses.

1215.106-70 Key personnel and facilities.

Whenever contractor selection (either sole source or competitive acquisition) has been substantially predicated on the contractor's possession of special capabilities (i.e. personnel and/or facilities) the contracting officer shall include the clause at 1252.215-71 "Key Personnel and Facilities" in the awarded contract.

1215.170 Pre-contract costs.

(a) Except as authorized in 1215.170(b), no DOT employee shall encourage or authorize any potential contractor to incur costs prior to contract award.

(b) No contract provision for reimbursement of a contractor's precontract costs shall be negotiated or included in any contractual document prior to approval of such provision by the head of the contracting activity. The request for HCA approval shall include the following:

(1) Identification of the requirement;

(2) Name of the proposed contractor;

(3) Brief description of the work for which precontract costs are necessary;

(4) Total amount of pre-contract costs involved and approximate duration of the period over which costs will be incurred;

(5) Reason(s) why use of pre-contract costs are necessary and in the best interest of the Government.

Subpart 1215.4—Solicitation and Receipt of Proposals and Quotations

1215.405 Solicitations for information or planning purposes.

All determinations to issue solicitations for information or planning purposes shall be approved at least one level above the contracting officer.

1215.406 Preparing requests for proposals (RFPs) and requests for quotations (RFQs).

1215.406-1 Uniform contract format.

In those cases where the uniform contract format is optional or does not apply, the solicitation and contract should be structured to conform to the various uniform contract format sections as closely as is practicable.

1215.407 Solicitation provisions.

(a) The contracting officer shall insert the provision at 1252.209-71 "Disclosure of Conflicts of Interest", in accordance with 1209.508-1.

(b) The contracting officer may insert a provision substantially the same as that at 1252.215-72, Cost Proposal Instructions, in requests for proposals when cost or pricing data are to be obtained.

(c) When automatic data processing (ADP) hardware and/or software will be acquired either as part or all of the acquisition, contracting officers may include Form DOT F. 4220.21 in the request for proposal (see 1253.215-70(a)). The form would then be completed by offerors and submitted with SF 1411 and other supporting data.

1215.408 Issuing solicitations.

Each administration having access to classified information during the acquisition process shall comply with appropriate security procedures.

1215.411 Receipt of proposals and quotations.

The requirement set forth in 1215.408 applies.

1215.413 Disclosure and use of information before award.

The alternate procedure at FAR 15.413-2 shall be used in lieu of those prescribed at FAR 15.413-1. Each administration shall establish procedures to implement this section. In so doing, the principles in FAR 15.413-1 (a) and (b) and the stipulations contained in FAR 15.413-2(f) shall be followed.

Subpart 1215.5—Unsolicited Proposals

1215.502 Policy.

Acceptance of unsolicited proposals is subject to the requirements of 1206.302-1.

1215.506 Agency procedures.

(a) Each administration shall establish procedures for controlling the receipt, evaluation, and timely disposition of unsolicited proposals.

(b) A central receiving office shall be established to implement these procedures. Each central receiving office shall:

(1) Serve as the point of contact with the submitter;

(2) Maintain records showing the receipt and status of unsolicited proposals; and

(3) Coordinate with other administrations or other Federal agencies when appropriate.

(c) An information copy of central office designations and any implementing instructions will be furnished to the Senior Procurement Executive.

Subpart 1215.6—Source Selection

1215.605 Evaluation factors.

Actual numerical weights, which may be employed in the evaluation of technical proposals, shall not be disclosed in the solicitation.

1215.612 Formal source selection.

DOT's procedures for formal source selection are contained in DOT Order 4200.11, Source Selection, which is available in DOT contracting offices. The procedures described in this DOT Order are consistent with requirements of the FAR.

Subpart 1215.8—Price Negotiation

1215.803 General.

(a) The procurement request initiator shall provide, as part of the procurement request, an independent Government estimate for all acquisitions in excess of $25,000. This estimate shall include, to the extent applicable, the major cost areas of labor (by category), materials, travel, consultant, computer usage, etc. The level of detail and rationale for the estimate shall be commensurate with the complexity and value of the acquisition. Any prior cost experience the Government has had in buying the same, or like items, should be referenced. The contracting officer may require, at his/her discretion, an estimate where the anticipated cost is less than $25,000. Under no circumstances should the estimate be based on information furnished solely by a potential contractor who may be considered for award.

(b) Unreasonable profit or fee demands made by an offeror, if not resolved by the contracting officer, shall be referred to the HCA.

1215.804 Cost or pricing data.

1215.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(a) Administrations shall establish monitoring procedures to ensure that the exemptions from the requirement to submit certified cost or pricing data (as specified in the FAR) are properly applied.

(b) Waivers should rarely be granted and utmost discretion must be exercised.

1215.805 Proposal analysis.

1215.805-4 Technical analysis.

(a) The head of the agency shall ensure that contracting activities are properly supported by agency technical personnel in the proposal evaluation process.

(b) A copy of the technical evaluation should be provided to the auditor for incorporation into the audit report whenever feasible.

1215.805-5 Field pricing support.

(a) Contracting officers normally shall allow a minimum of 30 days for receipt of an audit report. Exceptions to this 30-day minimum period may be made only when unusually urgent program considerations require a shorter time. Urgency caused by end of year funding considerations shall not be used as a justification for requiring a shorter period for advisory audit review.

(b) Administrations shall establish procedures for monitoring audit waivers. Urgency caused by end of year funding considerations shall not be used as justification for waiving audit.

(c) Administrations shall establish procedures for requesting and handling audit or other field pricing reports.

1215.807 Prenegotiation objectives.

(a) Administrations shall establish procedures for review and approval of prenegotiation objectives. These procedures shall require Prenegotiation Memoranda (see 1215.807-70 of this subpart) for each administration's high dollar and/or complex acquisitions. The approval levels established should be commensurate with the value and complexity of the proposed acquisition. Under no circumstances shall the procedures undermine the contracting officer's responsibility for determining a fair and reasonable price.

(b) Written documentation of all prenegotiation objectives is required and shall be made a part of the permanent contract file. (See also 1215.808(c) of this subpart).

1215.807-70 Content of prenegotiation memorandum.

The Prenegotiation Memorandum (PM) shall fully explain the Government's position as well as identify and justify the elements that are acceptable as proposed. Since the PM will ultimately become the basis for negotiation, it should be structured to provide an audit trail to the Price Negotiation Memorandum (see FAR 15.808 and 1215.808). Generally, the PM should address the following subjects in the order presented.

(a) *Introduction.* Include a brief description of the acquisition and a brief history indicating the extent of competition and results thereof. Indentify the prospective contractor(s) and the place(s) of performance (if not evident from the description of the acquisition), summarize the negotiation schedule, and identify the Government negotiating team members by name and position.

(b) *Special features and requirements.* In this area, discuss any special features (and related cost impact) of the acquisition including such items as:

(1) Letter contract or pre-contract cost requirements;

(2) Government property to be furnished;

(3) Contract option requirements;

(4) Contractor/Government investment in facilities and equipment (and any modernization thereof to be provided by the contractor/Government); and

(5) Any deviations, special clauses or conditions anticipated.

(c) *Cost and profit/fee analysis.* Include a parallel tabulation by element of cost and profit/fee of the offeror's proposal, the Government's negotiation objective, the auditor/field pricing position, and the Government's maximum position. For each element of cost, compare the offeror and Government estimates and explain how the latter was developed, including the estimating assumptions and projection techniques employed. Further, explain how historical costs, including costs incurred under a letter contract (if applicable), were used in developing the negotiation objective. Significant differences between the field pricing report (including any audit reports) and the negotiation objectives and/or offeror's proposal should be highlighted and explained. Also, technical evaluation results which caused the Government's cost negotiation objectives to significantly differ from the offeror's proposed costs, such as differences in staffing, should be highlighted and explained. Further, there should be an identification and brief discussion of each major subcontract involved, citing the type of subcontract and stating the degree of analysis performed on the subcontract cost estimate. In addition, the rationale for the Government's profit/fee objectives, and a completed copy of the DOT "Weighted Guidelines, Profit/Fee Objective" (DOT Form 4220.32), shall be included.

(d) *Type of contract contemplated.* Explain the type of contract contemplated and the reasons for its suitability. For an incentive contract, including award fee contracts, describe the planned profit/fee patterns, share lines, ceilings, and so forth.

(e) *Negotiation approval sought.* Indicate the negotiation approval sought.

[52 FR 44536, Nov. 19, 1987, as amended at 53 FR 28400, July 28, 1988]

1215.808 Price negotiation memorandum.

(a) A price negotiation memorandum is required for all negotiated acquisitions and modifications, regardless of dollar value. The extent and complexity of the memorandum shall depend upon the nature of the individual contract. The contracting officer shall include an affirmative statement in the memorandum that the price is fair and reasonable and give the basis for the determination. For those unusual circumstances where a fair and reasonable price is not readily achievable by the contracting officer, and the matter is referred to a higher level in the administration, the manager who makes the final decision on the matter shall sign an affirmative statement that the price finally established is acceptable.

(b) The price negotiation memorandum serves as a detailed summary of:

(1) The technical, business, contractual, pricing, and other aspects of the contract negotiated, and

(2) The methodology and rationale used in arriving at the final negotiated agreement.

(c) Normally, the price negotiation memorandum is a "stand alone" document. However, when a prenegotiation memorandum (see 1215.807-70) has been prepared, the subsequent price negotiation memorandum need explain:

(1) Only the differences between the prenegotiation position and the final negotiated settlement, and the basis for those differences; and

(2) The areas identified in FAR 15.808(a).

(d) The contracting officer shall sign and date the memorandum.

1215.810 Should-cost analysis.

A should-cost analysis will be conducted when required by the head of the contracting activity. The format for the should-cost team report may be that used by DOD or in a format required by the head of the contracting activity.

Subpart 1215.9—Profit

1215.902 Policy.

(a) Use of a structured approach for determining profit or fee is required as specified at FAR 15.902(a) except for:

(1) Architect-engineering contracts;

(2) Management contracts for operation and/or maintenance of Government facilities;

(3) Construction contracts;

(4) Contracts primarily requiring delivery of material supplied by subcontractors;

(5) Termination settlements;

(6) Cost-plus-award-fee-contracts;

(7) Unusual pricing situations where the weighted guidelines method has been determined to be unsuitable. Such exceptions shall be authorized by the head of the contracting activity.

(b) If the contracting officer makes a written determination that the pricing situation meets any of the circumstances set forth in 1215.902(a) other methods for establishing the profit objective may be used. These methods shall be supported in a manner similar to that used in the weighted guidelines (profit factor breakdown and documentation of profit objectives); however, investment or other factors that would not be applicable to the contract shall be excluded from the profit objective determination. (See also FAR 15.905-1.) It is intended that the methods will result in profit objectives for non-capital-intensive contracts that are below those generally developed for capital-intensive contracts.

1215.905 Profit-analysis factors.

1215.905-70 Methods.

(a) DOT Form 4220.32, "Weighted Guidelines Profit/Fee Objective", shall be used to compute profit or fee for actions covered under 1215.902.

(b) Profit/fee objectives shall be computed according to the following criteria:

(1) The profit/fee objective for manufacturing contracts shall be computed, except as provided in the following sentence, using the manufacturing weighted guidelines method which provides profit opportunity based on facilities capital investment. Certain contracts for the manufacture of small quantities of high technology supplies and equipment may not require a significant amount of facilities; in such cases, the research and development weighted guidelines method shall be used.

(2) The profit/fee objective for research and development contracts shall be computed using the research and development weighted guidelines method unless, in the judgment of the contracting officer, a significant amount of facilities is required for efficient contract performance, in which case the manufacturing weighted guidelines shall be used.

(3) The profit/fee objective for service contracts shall be computed using the service contract weighted guidelines method unless, in the judgment of the contracting officer, a significant amount of facilities is required for efficient contract performance, in which case the manufacturing weighted guidelines shall be used.

(4) In determining whether a particular contract shall be classsified as manufacturing, research and development, or services, primary reliance shall be placed on the nature of the work to be performed.

(5) Generally, assignment of specific percentages from within the "profit weight ranges" shown in columns ((c), (d) or (e) of DOT Form 4220.32 can be established after appropriate analysis of the elements of cost (i.e. items 7 through 12 of DOT Form 4220.32). However, to ensure consistency of contract risk assessment for DOT acquisitions, the assigned weight (%) shall generally be selected as follows:

(i) Type of contract and percentage ranges for profit objectives developed by using the manufacturing weighted guidelines method:

	Percent
Cost-plus-fixed-fee	0 to 0.5
Cost-plus-incentive-fee:	
With cost incentives only	1 to 2
With multiple incentives	1.5 to 3
Fixed-price-incentives:	
With cost incentives	3 to 5
With multiple incentives	4 to 6
Prospective price redetermination	4 to 6
Firm fixed-price	6 to 8

(ii) Type of contract and percentage ranges for profit objectives developed by using the research and development weighted guidelines method:

	Percent
Cost-plus-fixed-fee	0 to 0.5
Cost-plus-incentive-fee:	
With cost incentives only	1 to 2
With multiple incentives	1.5 to 3
Fixed-price-incentives:	
With cost incentives	2 to 4
With multiple incentives	3 to 5
Prospective price redetermination	3 to 5
Firm fixed-price	5 to 7

(iii) Type of contract and percentage ranges for profit objectives developed by using the service contract weighted guidelines method:

	Percent
Cost-plus-fixed-fee	0 to 0.5
Cost-plus-incentive	1 to 2
Fixed-price-incentive	2 to 3
Firm fixed-price	3 to 4

(iv) Time and material and labor-hour contracts priced on a time and material basis shall be considered to be cost-plus-fixed-fee contracts for the purpose of establishing a profit weight in the evaluation of the contractor's assumption of contract cost risk.

(6) For "manufacturing" contracts where contractor facilities are required and will benefit the fulfillment of contract requirements, DD Form 1861 "Contract Facilities Capital Cost of Money" shall be completed in accordance with the instructions on the reverse thereof, and the dollar amount of "Contract Facilities Capital Employed" (line 8 of DD Form 1861) shall be inserted in column 6(b), item 16 of DOT Form 4220.32.

[52 FR 44536, Nov. 19, 1987, as amended at 53 FR 28400, July 28, 1988]

1215.905-71 Profit/fee objective for noncommercial enterprises.

(a) In determining the fee or profit, consideration must be given to the tax posture of the organization. A fair and reasonable profit to a non-profit or not-for-profit organization with tax exempt status should be considerably lower than a fee to a commercial enterprise with no tax exempt status.

(b) The weighted guidelines method was designed for arriving at profit or fee objectives for other than nonprofit organizations. However, if appropriate adjustments are made to reflect differences between profit and non-profit organizations, the weighted guidelines method can be used as a basis for arriving at fee objectives for non-profit organizations. Therefore, the policy of the Department is to use the weighted guidelines method, as modified in paragraph (b)(2) of this section, to establish fee objectives that will stimulate efficient contract performance and attract the best capabilities of nonprofit organizations to Government oriented activities. The modifications shall not be applied as deductions against historical fee levels but to the fee objective for such a contract as calculated under the weighted guidelines method.

(1) As used in this subpart, nonprofit organizations are defined as those business entities organized and operated exclusively for charitable, scientific, or educational purposes, of which no part of the net earnings accrue to the benefit of any private shareholder or individual, of which no substantial part of the activities is carrying on propaganda or otherwise on behalf of any candidate for public office, and which are exempt from Federal income taxation under section 501 of the Internal Revenue Code.

(2) For contracts with nonprofit organizations where fees are involved, the following adjustments are required in the weighted guidelines method:

(i) An adjustment of minus one percent of the total effort shall be assigned in all cases where the manufacturing weighted guidelines method is used. An adjustment of minus three percent of the total effort shall be assigned in all cases where the research and development or services weighted guidelines method is used.

(ii) The weight range under "Contractor Cost Risk" shall be minus one percent to zero in lieu of zero percent to eight percent for contracts with those nonprofit organizations.

Subpart 1215.70—Revalidation of Requirements (Negotiated)

1215.7000 Policy.

In every case where a procurement action has been in process for more than 1 year from the date of the Procurement Request, the contracting officer shall revalidate user needs which justify the procurement action. The revalidation should be accomplished prior to requesting best and final offers (BAFO's), or immediately prior to award when BAFO's are not requested.

[52 FR 44536, Nov. 19, 1987, as amended at 53 FR 28400, July 28, 1988]

PART 1216—TYPES OF CONTRACTS

Subpart 1216.1—Selecting Contract Types [Reserved]

Subpart 1216.2—Fixed-Price Contracts

Sec.

1216.203 Fixed-price contracts with economic price adjustment.
1216.203-4 Contract clauses.
1216.203-470 Adjustment based on cost indices of labor or material.
1216.203-471 Solicitation provision.
1216.206 Fixed-ceiling-price contracts with retroactive price redetermination.
1216.206-3 Limitations.

Subpart 1216.3—Cost Reimbursement Contracts

1216.301 General.
1216.301-3 Limitations.

Subpart 1216.4—Incentive Contracts

1216.403 Fixed-price incentive contracts.
1216.404 Cost-reimbursement incentive contract.
1216.404-2 Cost-plus-award-fee contracts.
1216.404-270 Contract clauses.

Subpart 1216.5—Indefinite-Delivery Contracts

1216.503 Requirements contracts.
1216.504 Indefinite-quantity contracts.

Subpart 1216.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1216.603 Letter contracts.
1216.603-70 Procedures.

AUTHORITY: Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

SOURCE: 52 FR 44539, Nov. 19, 1987, unless otherwise noted.

Subpart 1216.1—Selecting Contract Types [Reserved]

Subpart 1216.2—Fixed-Price Contracts

1216.203 Fixed-price contracts with economic price adjustment.

1216.203-4 Contract clauses.

When none of the clauses prescribed in FAR 16.203-4 is appropriate, the contracting officer may use an alternate clause approved by the head of the contracting activity.

1216.203-470 Adjustment based on cost indices of labor or material.

(a) All economic price adjustment clauses utilizing indices must be approved by the head of the contracting activity.

(b) The contracting officer may also determine it appropriate to provide for certain economic price adjustment arrangements between the prime contractor and subcontractors to properly allocate risks. In such circumstances, provision for incorporation of price adjustment clauses in specified subcontracts should be included in the price adjustment provision of the prime contract.

1216.203-471 Solicitation provision.

The contracting officer shall insert the provision at 1252.216-71, "Evaluation of Proposals Subject to Economic Price Adjustment" in all solicitations that contain an economic price adjustment clause.

1216.206 Fixed-ceiling-price contracts with retroactive price redetermination.

1216.206-3 Limitations.

The head of the contracting activity may approve the use of a fixed-ceiling-price contract with retroactive price redetermination.

Subpart 1216.3—Cost Reimbursement Contracts

1216.301 General.

1216.301-3 Limitations.

Each administration shall establish a format for the determination and findings (D&F) required by FAR 16.301-3(c). The D&F shall cover all the elements set forth in FAR 16.301-3 and shall be executed by the contracting officer.

Subpart 1216.4—Incentive Contracts

1216.403 Fixed-price incentive contracts.

The determination and findings required by FAR 16.403(c) shall be executed by the contracting officer.

1216.404 Cost-reimbursement incentive contract.

1216.404-2 Cost-plus-award-fee contracts.

1216.404-270 Contract clauses.

The contracting officer shall insert the following clauses in award fee contracts. Each clause may be modified to meet individual situations.

(a) 1252.216-72, Estimated Cost, Base Fee, and Award Fee;

(b) 1252.216-73, Payment of Base and Award Fee;

(c) 1252.216-74, Determination of Award Fee;

(d) 1252.216-75, Performance Evaluation Plan;

(e) 1252.216-76, Distribution of Award Fee.

Subpart 1216.5—Indefinite-Delivery Contracts

1216.503 Requirements contracts.

The procurement request initiator shall prepare a written statement outlining the basis and methodology for determining the estimated quantity under a requirements contract. This statement shall be fowarded with the procurement request.

1216.504 Indefinite-quantity contracts.

The procurement request initiator shall prepare a written statement outlining the basis and methodology for determining the specified minimum and estimated maximum quantity. This statement shall be fowarded with the procurement request.

Subpart 1216.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1216.603 Letter contracts.

1216.603-70 Procedures.

(a) Requests for authority to issue letter contracts shall be approved by the head of the contracting activity. The requirements of FAR Part 6 and Part 1206 shall be followed when awarding or contemplating award of a letter contract. The request for authority to issue a letter contract shall include the following:

(1) Name and address of proposed contractor.

(2) Location were contract is to be performed.

(3) Contract number, including modification number if applicable.

(4) Brief description of the work or services to be performed.

(5) Performance period or delivery schedule.

(6) Amount of letter contract.

(7) Performance period of letter contract.

(8) Estimated total amount of definitive contract.

(9) Type of definitive contract to be executed (fixed price, cost-plus-award-fee, etc.).

(10) Statement that definitive contract will contain all required clauses or that deviations therefrom have been approved.

(11) Statement as to the necessity and advantage to the Government of the use of the proposed letter contract, and that no other contract type is suitable.

(12) If a modification, date of letter contract approval and of execution.

(13) Statement as to the extent or degree of competition obtained during the preaward process leading up to the request for authority to issue subject letter contract. A statement shall also be included indicating the status of the "Justification for Other Than Full and Open Competition", in those instances when it is required under FAR Part 6 and award is contemplated prior to approval of thu justification for other than full and open competition.

(b) Profit or fee under letter contracts, shall not be paid until the contract has been definitized.

(c) In addition to the requirements set forth at FAR 16.603-2 (c) through (e) and FAR 16.603.4, the letter contract shall include:

(1) Signature of the contracting officer.

(2) Provision for written acceptance by the contractor.

(3) Statement of work.

(4) Provision for delivery or performance schedule and balance of inspection and acceptance.

(5) Statement that no profit or fee shall be paid under the letter contract.

(6) List of Government property and value, if the property is being provided

prior to the scheduled date of definitization.

PART 1217—SPECIAL CONTRACTING METHODS

Subpart—1217.1—Multi-year Contracting

Sec.

1217.102 Policy.
1217.102-3 Objectives.

Subpart 1217.4—Leader Company Contracting

1217.402 Limitations.

Subpart 1217.70—Fixed Price Contracts for Vessel Repair, Alteration or Conversion

1217.7001 Clauses.

Subpart 1217.71—Shared Energy Savings Contracting

1217.7100 Policy.

AUTHORITY: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)) 48 CFR 1.301; 49 CFR 1.59.

SOURCE: 52 FR 44540, Nov. 19, 1987, unless otherwise noted.

Subpart 1217.1—Multi-year Contracting

1217.102 Policy.

1217.102-3 Objectives.

The head of the contracting activity is designated as the approval authority for all clause modifications described in FAR 17.102-3(d). This authority may not be redelegated.

Subpart 1217.4—Leader Company Contracting

1217.402 Limitations.

Leader company contracting shall not be used without the written authorization of the Senior Procurement Executive.

Subpart 1217.70—Fixed Price Contracts for Vessel Repair, Alteration or Conversion

1217.7001 Clauses.

(a) Clauses set forth in 1252.217-71 through 1252.217-80 shall be included in sealed bid fixed-price contracts for vessel repair, alteration or conversion, and which are to be performed within the United States, its possessions, or Puerto Rico. Unless inappropriate, the clauses should also be included in negotiated contracts and contracts to be performed outside the United States. The Maritime Administration may deviate from these requirements, as appropriate, in accordance with 1201.103(b).

(b) The clause at 1252.217-81, Guarantee, shall be used where general guarantee provisions are deemed desirable by the contracting officer. When inspection and acceptance tests will afford full protection to the Government in ascertaining conformance to specifications and the absence of defects and deficiencies, no guarantee clause for that purpose shall be included in the contract. The customary guarantee period, to be inserted in the first sentence of the clause at 1252.217-81, Guarantee, is 60 days. However, in certain instances, the contracting officer may desire to include a clause in a contract for a guarantee period of more than 60 days. In such instances, and where, after full inquiry, it has been determined that such longer guarantee period will not involve increased costs, a longer guarantee period may be substituted for the usual 60 days. Where the full inquiry discloses that such longer guarantee period will involve, or is reasonably expected to involve, increased costs, such fact and the reason for the need for such longer period shall be set forth in letter form to the head of the contracting activity, requesting approval for use of guarantee period in excess of 60 days. Upon approval, the longer period may be inserted in the first sentence of the clause at 1252.217-81, Guarantee.

(c) The clause at 1252.217-70, Index for Specifications, shall be used when appropriate.

[52 FR 44540, Nov. 19, 1987, as amended at 53 FR 28400, July 28, 1988]

Subpart 1217.71—Shared Energy Savings Contracting

1217.7100 Policy.

Contracts for shared energy savings of up to 25 years in length are permitted under Title VIII of the National Energy Conservation Policy Act, as amended. Shared energy savings arrangements are appropriate where a contractor makes improvements and/or operating changes to Federally-owned buildings and facilities to improve energy efficiency, at no cost to the Federal Government. Proposed actions under this section should be coordinated with the Office of Acquisition and Grant Management (M-60).

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 1219.2—Policies

Sec.
1219.201 General policy.
1219.201-70 Director, Office of Small and Disadvantaged Business Utilization.
1219.201-71 Small and Disadvantaged Business Utilization Specialist.

Subpart 1219.5—Set-Asides for Small Business

1219.501 General.
1219.503 Setting aside a class of acquisitions.
1219.503-70 Class set-aside for construction.

Subpart 1219.6—Certificates of Competency and Determinations of Eligibility

1219.602 Procedures.
1219.602-1 Referral.

Subpart 1219.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

1219.705 Responsibilities of the contracting officer under the subcontracting assistance program.
1219.705-2 Determining the need for a subcontracting plan.
1219.705-6 Postaward responsibilities of the contracting officer.
1219.705-70 Synopsis of contracts containing Pub. L. 95-507 subcontracting plans and goals.

AUTHORITY: Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

SOURCE: 52 FR 44541, Nov. 19, 1987, unless otherwise noted.

Subpart 1219.2—Policies

1219.201 General policy.

The heads of the agencies shall be responsible for recommending goals for small, and small disadvantaged business utilization for programs under their cognizance. The recommended goals shall be developed in collaboration with the head of the contracting activity, program officials, the Small and Disadvantaged Business Utilization Specialists (SDBUS) and shall take into account both past performance relative to such goals and the number, type, and dollar value of acquisitions projected for the ensuing fiscal year.

[52 FR 44541, Nov. 19, 1987, as amended at 53 FR 28400, July 28, 1988]

1219.201-70 Director, Office of Small and Disadvantaged Business Utilization.

The Director, OSDBU, is responsible for the implementation and execution of the small, and small disadvantaged business programs required by sections 8 and 15 of the Small Business Act, as amended, and provides guidance and advice, as appropriate, to agency program and contracts officials. The Director, OSDBU, is the central point of contact for general inquiries concerning the small and disadvantaged business programs from industry, the Small Business Administration (SBA), and from the Congress. The Director, OSDBU, shall represent the Department in discussions with other Government agencies on small and small disadvantaged business matters.

1219.201-71 Small and Disadvantaged Business Utilization Specialist.

(a) SDBUSs shall be appointed by the heads of contracting activities.

(b) The SDBUS shall perform the following duties, as appropriate:

(1) Maintain a program designed to locate capable small and small disadvantaged business sources for current and future acquisitions;

(2) Coordinate inquiries and requests for advice from small and small disadvantaged business concerns on acquisition matters;

(3) Review procurement requests to:

(i) Assure that small business concerns will be afforded an equitable opportunity to compete;

(ii) As appropriate, initiate recommendations for small business set-asides, (individual and class) or offers of requirements to the SBA for the 8(a) program;

(iii) Identify possible breakout of items or services suitable for acquisition from small business and small disadvantaged business concerns;

(4) Take action to assure the availability of adequate specifications and drawings, when necessary, to obtain small business participation in an acquisition. When small business concerns cannot be given an opportunity on a current acquisition, initiate action, in writing, with appropriate technical and contracting personnel to ensure that necessary specifications and/or drawings for future acquisitions are available.

(5) Advise small business with respect to the financial assistance available under existing laws and regulations and assist such concerns in applying for financial assistance;

(6) Participate in the evaluation of prime contractor's small business subcontracting programs;

(7) Assure that adequate records are maintained, and accurate reports prepared, concerning small business participation in acquisition programs;

(8) Make available to SBA copies of solicitations when so requested;

(9) Act as liaison with the appropriate SBA office or representative in connection with set-asides, certificates of competency, size classification, and any other matter concerning the small and small, disadvantaged business programs; and

(10) May participate, if required, in Business Opportunity/Federal Procurement Conference, and other Government-industry conferences and meetings.

Subpart 1219.5—Set-Asides for Small Business

1219.501 General.

The SDBUS shall initiate recommendations to the contracting officer for small business set-asides with respect to individual acquisitions or classes of acquisitions or portions thereof.

1219.503 Setting aside a class of acquisitions.

1219.503-70 Class set-aside for construction.

(a) Each proposed acquisition for construction estimated to cost $2,000,000 or less shall be set-aside for exclusive small business participation. Such set-asides shall be considered to be unilateral small business set-asides, and shall be withdrawn in accordance with the procedure of FAR 19.506 only if found not to serve the best interest of the Government.

(b) Small business set-aside perferences for construction acquisition in excess of $2,000,000 shall be considered on a case-by-case basis.

Subpart 1219.6—Certificates of Competency and Determinations of Eligibility

1219.602 Procedures.

1219.602-1 Referral.

A copy of the documentation supporting the determination that a small business concern is not responsible, as required by FAR 19.602-1(a), shall be transmitted to the Director, OSDBU, concurrently with the submission of a copy of the documentation to the appropriate SBA Regional Office.

Subpart 1219.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

1219.705 Responsibilities of the contracting officer under the subcontracting assistance program.

1219.705-2 Determining the need for a subcontracting plan.

A copy of all determinations that there are no subcontracting opportunities (see FAR 19.705-2(c)) shall be provided to the Director, OSDBU.

1219.705-6 Postaward responsibilities of the contracting officer.

A copy of each approved small business subcontracting plan, shall be provided to the Director, OSDBU.

1219.705-70 Synopsis of contracts containing Pub. L. 95-507 subcontracting plans and goals.

The synopsis of contract award, where applicable, shall include a statement identifying the contract as one containing Pub. L. 95-507 subcontracting plans and goals.

PART 1222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1222.1—Basic Labor Policies

Sec.
1222.101 Labor relations.
1222.101-3 Reporting labor disputes.
1222.101-70 Admittance of union representatives to DOT installations.
1222.101-71 Contract clauses.

Subpart 1222.3—Contract Work Hours and Safety Standards Act

1222.303 Administration and enforcement.

Subpart 1222.6—Walsh-Healey Public Contracts Act

1222.608 Procedures.
1222.608-2 Determination of eligibility.
1222.608-3 Protests against eligibility.
1222.608-4 Award pending final determination.
1222.608-6 Postaward.

Subpart 1222.70—Service Contract Act of 1965

1222.7001 General.
1222.7002 Contract clauses.

Subpart 1222.71—Administration Labor Advisor

1222.7101 Administration labor procedures.

Subpart 1222.72—Fair Labor Standards Act of 1938

1222.7201 General.

Subpart 1222.73—Notification to 8(a) Subcontractors

1222.7301 Requirements.

AUTHORITY: Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)); 48 CFR 1.301; 49 CFR 1.59.

SOURCE: 52 FR 44542, Nov. 19, 1987, unless otherwise noted.

Subpart 1222.1—Basic Labor Policies

1222.101 Labor relations.

1222.101-3 Reporting labor disputes.

(a) When a strike or labor dispute occurs or is anticipated which has, or is expected to have, a serious impact on DOT operations or when for any other reason notification of the administration's headquarters is warranted, the contracting officer shall report the following information to the administration labor advisor, if appointed or designated official, in accordance with administration procedures (see Subpart 1222.71):

(1) Identification and location of strike, contract number, contractor's name, and name of contractor's representative at the plant or construction site.

(2) Urgency or criticality of affected contract.

(3) Date strike began or may begin.

(4) Main issues involved.

(5) Name and number of local union and name and address of cognizant local union official.

(6) Evaluation of strike situation with regard to possibilities of settlement.

(7) Current apparent temper of the work site situation with regard to ingress and egress.

(8) Number of employees affected.

(9) Participation, if any, by the Federal Mediation and Conciliation Service or by a state mediation agency.

(10) If the acquisition is urgent and the strike appears likely to be one of extended duration, include comment on the feasibility of acquisition from an alternate source.

(b) When a strike or labor dispute at the plant of a subcontractor is an actual or potential threat to timely completion of the DOT contract and when such delay will be a serious handicap to operations, the above report shall contain the following in lieu of the information indicated above.

(1) Urgency or criticality of affected contract.

(2) Description and quantity of the material tied up by strike.

(3) Percent completion of contractor's order in supplier's plant.

(4) Evaluation of strike situation with regard to possibilities of settlement. (This may be obtained from the DOT contractor or from the subcontractor.)

(5) Contractor's position as to use of alternate supply sources.

(c) Upon settlement of a strike or labor dispute reported under paragraph (a) or (b) of this section, the administration labor advisor, or designated official, shall be informed as to the date on which work was resumed.

1222.101-70 Admittance of union representatives to DOT installations.

It is the Department's policy to admit accredited labor union representatives of contractor employees to DOT installations to visit work sites for the purpose of transacting business with contractors, their employees, or union stewards pursuant to existing collective bargaining agreements; provided that their presence and activities will not interfere with the work progress or violate the safety or security regulations applicable to installation visitors. Restrictions in excess of those imposed on other visitors transacting business at the installation should not be imposed on such employee representatives. Permission to visit an installation shall not include the right to hold meetings, collect dues, or make speeches. In the event employee representatives are denied entry to a work site for any reason, a report of such denial will immediately be sent to the administration labor advisor, or designated official. Such report shall include the reasons for denial, including names of representatives denied entry and their union affiliation, including local union number.

1222.101-71 Contract clauses.

(a) The contracting officer shall insert the clause at 1252.222-71, "Strikes or Picketing Affecting Timely Completion of the Contract Work", in all FAA construction contracts. The clause may also be used in construction contracts awarded by other administrations.

(b) The contracting officer shall insert the clause at 1252.222-72, "Strikes or Picketing Affecting Access to FAA Facility", in all contracts requiring work at an FAA facility. The clause, appropriately modified, may also be used by other administrations.

Subpart 1222.3—Contract Work Hours and Safety Standards Act

1222.303 Administration and enforcement.

The contracting agency has primary responsibility for administration and enforcement of the overtime provisions of the Contract Work Hours and Safety Standards Act. While the contractor is not required to submit payrolls to the contracting officer unless the Davis-Bacon Act applies, the contracting officer is responsible for assuring by other means that laborers and mechanics are paid any overtime premium due them under the Contract Work Hours and Safety Standards Act. This may be done by reviewing payroll records at the contractor's office and by interviewing employees.

Subpart 1222.6—Walsh-Healey Public Contracts Act

1222.608 Procedures.

1222.608-2 Determination of eligibility.

The contracting officer shall transmit the information described in FAR 22.608-2 (f)(1)(ii) and (f)(2). The contracting officer shall furnish a copy of such transmittals to the administration labor advisor, or designated official (see Subpart 1222.70).

1222.608-3 Protests against eligibility.

The contracting officer shall transmit the information described in FAR 22.608-3(b). The contracting officer shall furnish a copy of such transmittals to the administration labor advisor, or designated official.

1222.608-4 Award pending final determination.

Award may be made immediately, as provided in FAR 22.608-4(a), if the contracting officer's certification is approved in writing by the head of the contracting activity. The contract file documentation addressed at FAR 22.608-4(b) is the approved certification required by FAR 22.608-4(a). A copy of the written notice shall be furnished to the administration's labor advisor, or designated official.

1222.608-6 Postaward.

(a) See 1249.1 for procedures regarding contract termination.

(b) A copy of notification furnished the Department of Labor as required by FAR 22.608-6(c) shall be furnished the administration's labor advisor, or designated official.

Subpart 1222.70—Service Contract Act of 1965

1222.7001 General.

Pending future coverage in the FAR, administrations shall continue to follow policies and procedures in FPR Temporary Regulation 76, Revision of Labor Standards for Federal Service Contracts, February 23, 1984, and administration procedures instituted thereunder.

1222.7002 Contract clauses.

(a) Clause for contracts of $2,500 or less. The contracting officer shall insert the clause at 1252.222-70, Service Contract Act of 1965 as amended, Contracts of $2,500 or Less, in solicitations and contracts when the contract amount is expected to be $2,500 or less and the Service Contract Act of 1965 as amended, is applicable. With respect to Blanket Purchase Agreements, the amount to be compared to the dollar threshold is the total dollar amount of orders reasonably anticipated to be placed in a 12-month period.

(b) Clauses for contracts over $2,500. The contracting officer shall insert the full text of the following clauses in solicitations and contracts when the contract is subject to the Service Contract Act of 1965, as amended:

(1) The clause at 1252.222-75, Service Contract Act of 1965, as amended, when the contract is (i) for over $2,500 or (ii) for an indefinite dollar amount and the contracting officer expects the contract amount will exceed $2,500 during any 12-month period.

(2) The clause at 1252.222-77, Fair Labor Standards Act and Service Contract Act-Price Adjustment (Multi-year and Option Contracts), when the contract is expected to be a fixed-price service contract and is a multi-year contract or is a fixed-price services contract with options to renew.

(3) The clause at 1252.222-78, Fair Labor Standards Act and Service Contract Act-Price Adjustment, when the contract is expected to be a fixed-price service contract and is not a multi-year contract and does not contain options to renew.

(4) The clause at 1252.222-79, Service Contract Act Requirements as to Vacation Pay.

[52 FR 44542, Nov. 19, 1987, as amended at 53 FR 28400, July 28, 1988]

Subpart 1222.71—Administration Labor Advisor

1222.7101 Administration labor procedures.

Each administration shall establish procedures to assure compliance with this part. Each administration may appoint a labor advisor or designate an official responsible for coordinating labor policy and procedures as they pertain to the acquisition process. The individual so designated shall be located in its headquarters and the appointment shall be made by memorandum, with a copy sent to each of the administration's contracting offices.

Subpart 1222.72—Fair Labor Standards Act of 1938

1222.7201 General.

The Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 through 219), establishes minimum wage and maximum hour standards applicable to employees, unless otherwise exempted, engaged in interstate or foreign commerce or in the production of goods for such commerce. Thus, the statute may or may not cover employees on a Government contract, depending upon the nature of the contract work. The Department of Labor has responsibility for administering and enforcing this statute. A Labor Department investigation in connection therewith may be of vital concern to DOT because it may divulge violations of the Davis-Bacon Act, Contract Work Hours and Safety Standards Act, or Copeland (Anti-kickback) Act for which DOT has enforcement responsibility. When access to a contractor's submitted records is requested by the Department of Labor in connection with its investigation under the Fair Labor Standards Act, the contracting officer shall cooperate fully, and shall immediately request the Labor Department representative to furnish promptly any information developed indicating violation of the above statutes for which DOT has enforcement responsibility.

Subpart 1222.73—Notification to 8(a) Subcontractors

1222.7301 Requirements.

Contracting officers shall assure that firms receiving 8(a) subcontracts subject to the Davis-Bacon Act, Service Contract Act, Contract Work Hours and Safety Standards Act, Copeland (Anti-Kickback) Act and Walsh-Healy Act are made aware during contract negotiation of the requirements of these Acts.

PART 1223—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

Subpart 1223.1—Pollution Control and Clean Air and Water

Sec.
1223.106 Delaying award.
1223.107 Compliance responsibilities.

Subpart 1223.70—Safety Requirements for Selected DOT Contracts

1223.7001 Contract clauses.

Authority: Sec. 205(c) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Source: 52 FR 44544, Nov. 19, 1987, unless otherwise noted.

Subpart 1223.1—Pollution Control and Clean Air and Water

1223.106 Delaying award.

The contracting officer shall submit all notifications initiated under FAR 23.106 to the Environmental Protection Agency through the Senior Procurement Executive.

1223.107 Compliance responsibilities.

Notification required by FAR 23.107 shall be submitted in the same manner as required by 1223.106.

Subpart 1223.70—Safety Requirements for Selected DOT Contracts

1223.7001 Contract clauses.

(a) Where all or part of a contract will be performed on Government owned or leased property, the contracting officer shall insert the clause at 1252.223-71 "Accident and Fire Reporting."

(b) For all NHTSA solicitations and contracts under which human test subjects will be utilized, the contracting officer shall insert the clause at 1252.223-72 "Protection of Human Subjects." Copies of the NHTSA directives shall be made available to the successful contractor.

[52 FR 44544, Nov. 19, 1987, as amended at 53 FR 28400, July 28, 1988]

PART 1224—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1224.1—Protection of Individual Privacy

Sec.
1224.102 General.
1224.102-70 Applicability.

Subpart 1224.2—Freedom of Information Act

1224.202 Policy.

Authority: Sec. 205(c), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Source: 52 FR 44544, Nov. 19, 1987, unless otherwise noted.

Subpart 1224.1—Protection of Individual Privacy

1224.102 General.

DOT rules and regulations implementing the Privacy Act are located at 49 CFR Part 10.

1224.102-70 Applicability.

(a) Illustrations of systems of records to which the Privacy Act applies include the following:

(1) Records which are maintained for administrative functions of a Federal agency, such as personnel and payroll records.

(2) Health records which are maintained by a contractor engaged to provide health services to agency personnel.

(b) Illustrations of systems of records to which the Act does not apply include the following:

(1) Records which are maintained by a contractor on individuals whom the contractor employs in the process of providing goods and services to the Federal Government.

(2) Under contracts with a State or private educational organization to provide training, the records generated on contract students pursuant to their attendance (admission forms, grade reports), provided that they are similar to those maintained on other students are commingled with records on other students.

(3) A system used by a contractor as a result of management discretion, for example, systems of personnel records maintained by contractors on their own behalf.

Subpart 1224.2—Freedom of Information Act

1224.202 Policy.

DOT rules and regulations implementing the Freedom of Information Act (FOIA) are located in 49 CFR Part 7.

PART 1225—FOREIGN ACQUISITION

Subpart 1225.1—Buy American Act—Supplies

Sec.
1225.102 Policy.

Subpart 1225.2—Buy American Act—Construction Materials

1225.202 Policy.

Sec.

Subpart 1225.3—Balance of Payments Program

1225.302 Policy.
1225.304 Excess and near-excess foreign currencies.

AUTHORITY: Sec. 205(c), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

SOURCE: 52 FR 44544, Nov. 19, 1987, unless otherwise noted.

Subpart 1225.1—Buy American Act—Supplies

1225.102 Policy.

The head of the contracting activity shall approve the determination required by FAR 25.102(b) for contracts exceeding $1 million.

Subpart 1225.2—Buy American Act—Construction Materials

1225.202 Policy.

The head of the contracting activity shall approve the determination required by FAR 25.202(b) for cost of construction materials exceeding $100,000.

Subpart 1225.3—Balance of Payments Program

1225.302 Policy.

The head of the contracting activity shall make the determinations/provide the authorization required by FAR 25.302 (b)(2), (b)(3) and (c).

1225.304 Excess and near-excess foreign currencies.

The head of the contracting activity shall make the determination required by FAR 25.304(c).

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1227—PATENTS, DATA AND COPYRIGHTS

Subpart 1227.2—Patents

Sec.
1227.201-1 General.

Subpart 1227.3—Patent Rights Under Government Contracts

1227.302 Policy.
1227.305 Administration of patent right clauses
1227.305-4 Conveyance of invention rights acquired by the Government.

Subpart 1227.4—Rights in Data and Copyrights

1227.401-73 Solicitation provisions and contract clauses.

Authority: Sec. 205(c), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Source: 52 FR 44545, Nov. 19, 1987, unless otherwise noted.

Subpart 1227.2—Patents

1227.201-1 General.

For the Department of Transportation, the office having cognizance of patent matters shall be the DOT Patent Counsel, Office of General Counsel.

Subpart 1227.3—Patent Rights Under Government Contracts

1227.302 Policy.

The DOT Senior Procurement Executive shall be the official that approves all determinations to require the contractor, or assignee, or exclusive licensee to grant such licenses as specified at FAR 27.302(f). The head of the contracting activity shall have the responsibility and authority for making findings and determination with respect to the granting of such a license and submitting such findings and determination to the Senior Procurement Executive for approval. When necessary, the contracting officer or the HCA should seek advice from the OST Patent Counsel.

1227.305 Administration of patent right clauses.

1227.305-4 Conveyance of invention rights acquired by the Government.

(a) The contracting officer shall ensure that solicitations and contracts which include either of the clauses at FAR 52.227-11 and 52.227-13, include a mechanism by which the contractor is required to report inventions made in the course of contract performance. Contracting officers may fulfill this requirement by requiring the contractor to submit a DD Form 882, Report of Inventions and Subcontracts, at contract completion, and when required to disclose inventions in accordance with the FAR clauses cited above. Contracting officers shall ensure that the contractor submits all of the disclosure information required by the specific FAR clause included in the contract.

(b) When a contractor discloses an invention under a contract including one of the clauses cited above, the contracting officer shall take the following action(s), as appropriate:

(1) For contracts which include the FAR clause 52.227-11:

(i) Ensure that the Government receives a license pursuant to paragraph (b) of the clause.

(ii) Ensure that title to any subject invention is transferred to the Government when required pursuant to paragraph (d) of the clause.

(2) For contracts which include the FAR clause 52.227-13:

(i) Ensure that the contractor assigns the entire right, title, and interest to the subject invention to the Government pursuant to paragraph (b) of the clause.

(ii) Ensure that the Government retains the minimum rights specified in paragraph (c) of the clause when the contractor retains principal or exclusive rights.

Subpart 1227.4—Rights in Data and Copyrights

1227.409 Solicitation provisions and contract clauses.

(a) The contracting officer may prescribe, as appropriate, clauses consistent with the policy of FAR 27.402 in contracts to be performed outside the United States, its possessions, and Puerto Rico.

(b) The contracting officer may prescribe, as appropriate, clauses consistent with the policy in FAR 27.402 in contracts for architect-engineer services and construction work.

(c) The contracting officer shall prescribe clauses consistent with the requirements of Pub. L. 97-219 (the Small Business Administration Development Act of 1982) and the Small Business Innovation Policy Directive No. 65-01 in Small Business Innovative Research (SBIR) contracts.

(d) The contracting officer may prescribe, as appropriate, clauses consistent with the policy of FAR 27.402 in contracts for the operation of Government-owned research, development, or production facilities.

[52 FR 44545, Nov. 19, 1987, as amended at 53 FR 28400, July 28, 1988]

PART 1228—BONDS AND INSURANCE

Subpart 1228.1—Bonds

Sec.
1228.106 Administration.
1228.106-6 Furnishing of information.
1228.106-7 Withholding contract payments.
1228.106-70 Execution and administration of bonds.

Subpart 1228.3—Insurance

1228.306 Insurance under fixed-price contracts.
1228.306-70 Contracts for lease of aircraft.
1228.306-7001 Clauses.

AUTHORITY: Sec. 205(c) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

SOURCE: 52 FR 44545, Nov. 19, 1987, unless otherwise noted.

Subpart 1228.1—Bonds

1228.106 Administration.

1228.106-6 Furnishing of information.

(a) The contracting officer shall upon request furnish the name and address of the prime contractor's surety to employees, suppliers, and subcontractors having a contractual or employment relationship with the prime contractor or a first-tier subcontractor. When furnishing such information, the inquirer may also be informed that:

(1) An employee, supplier, or subcontractor having a contractual or employment relationship with a prime contractor or first-tier subcontractor has the right to sue the prime contractor's surety under the Miller Act for amounts owed for work performed or materials delivered; and

(2) In order to avail themself of legal remedies provided by the Miller Act, an employee, supplier, or subcontractor having a contractual or employment relationship with a first-tier subcontractor must act within the following time frames:

(i) Inform the prime contractor within 90 days after the day on which the last of the work was performed or the day on which the last of the material was delivered, that such work or material has not been fully paid for, and

(ii) File against the surety within one year after the day on which the last of the work was performed or the day on which the last of the material was delivered, any required court action for collection of amounts due. "Employees" as used in this paragraph means both supervisory and nonsupervisory employees who have furnished or have been requested to furnish labor in prosecution of the work required by the contract in question. See 1228.106-6(b) of this subpart, for the contracting officer's responsibility with respect to laborers, mechanics, appentices, trainees, watchmen and guards.

(b) On construction contracts exceeding $2,000, if the contracting officer is informed, either through routine compliance checking, a complaint, or a request for information, that a laborer, mechanic, apprentice, trainee, watchman or guard employed by the contractor or subcontractor at any tier may have been paid wages less than those required by the applicable labor standards provisions of the contract, the contracting officer shall promptly initiate an investigation in accordance with FAR Subpart 22.4, irrespective of the employee's rights under the Miller Act. When an employee's request for information is involved, the contracting officer shall inform the inquirer that such investigation will be made. Such investigation is required pursuant to the provisions of the Davis-Bacon Act, Contract Work Hours and Safety Standards Act, and Copeland (Anti-kickback) Act for assuring proper payment to such employees. Claims of such employees, along with claims of the United States referred to in 1228.106-7 take precedence over claims of sureties.

(c) When furnishing a copy of a payment bond and contract in accordance with FAR 28.106-6(c), the requirement for a copy of the contract may be satisfied by furnishing a machine copy of the contract's first pages, which show the contract number and date, the contractor's name and signature, the contracting officer's signature, and the description of the contract work. The officer furnishing the copies shall place the statement "Certified to be a true and correct copy" followed by his or her signature and title and name of the operating administration. The fee for furnishing the requested certified copies shall be determined in accordance with the Departmental Freedom of Information Act regulation (49 CFR Part 7). Payment for requested records shall be made by check or money order drawn to the order of the operating administration providing the certified copies, or by cash.

1228.106-7 Withholding contract payments.

A surety which, pursuant to a Miller Act payment bond, has satisfied debts owed by the contractor to an employee of the contractor, a first-tier subcontractor, or a material man supplying the contractor, obtains a right of subrogation to contract funds due the contractor and held by the Government. However, the surety's subrogation rights are subject to any claims of the United States based on the contractor's debts to it and the Government's right to make payment to the contractor from withheld funds if necessary to achieve timely completion of the contracts.

1228.106-70 Execution and administration of bonds.

(a) The surety shall be notified, as soon as feasible, of the contractor's failure to perform in accordance with the terms of the contract.

(b) When a partnership is a principal on a bond, the names of all the members of the firm shall be listed in the bond following the name of the firm, and the phrase "a partnership composed of." If a principal is a corporation, the state of incorporation must appear.

(c) Performance or payment bond other than an annual bond shall not antedate the contract to which it pertains.

(d) Bonds shall be filed with the original contract to which they apply, or all bonds shall be separately maintained and reviewed quarterly for validity. If separately maintained, each contract file shall cross reference the applicable bonds.

Subpart 1228.3—Insurance

1228.306 Insurance under fixed-price contracts.

1228.306-70 Contracts for lease of aircraft.

1228.306-7001 Clauses.

(a) The clauses at 1252.228-71 through 1252.228-73 shall, unless otherwise indicated by the specific instructions for their use, be inserted in any contract for the lease of aircraft (including aircraft used in out-service flight training).

(b) Insert the clause at 1252.228-71 except in the following circumstances:

(1) When the hourly rental rate does not exceed $250.00 and the total rental cost for any single transaction is not in excess of $2,500 or

(2) Where the cost of hull insurance does not exceed 10% of the contract rate, or

(3) When the lessor's insurer does not grant a credit for uninsured hours, thereby preventing the lessor from granting the same to the Government.

(c) When fair market value of the aircraft can be determined, insert the clause at 1252.228-72.

(d) Section 504 of the Federal Aviation Act of 1958, as amended, provides that no lessor of an aircraft under a bona fide lease of thirty days or more, shall be liable by reason of his interest as lessor or title-holder of the aircraft for any injury to or death of persons, or damage to or loss of property, unless such aircraft is in the actual possession or control of such person at the time of such injury, death, damage or loss. On short-term or intermittent-use leases, however, the owner may be liable for damage caused by operation of the aircraft. It is usual for the aircraft owner to retain insurance covering this liability during the term of such lease. Such insurance can, often for little or no increase in premium, be made to cover the Government's exposure to liability as well. In order to take advantage of this coverage, the Risks and Indemnities clause prescribed in paragraph (d)(1) of this section shall be used.

(1) Insert the clause at 1252.228-73 in any contract for out-service flight training or for the lease of aircraft where the Government will have exclusive use of the aircraft for a period of less than thirty days.

(2) Any contract for out-service flight training shall include a clause in the contract Schedule stating substantially that the contractor's personnel shall at all times during the course of the training be in command of the aircraft, and that at no time shall other personnel be permitted to take command of the aircraft.

[52 FR 44545, Nov. 19, 1987, as amended at 53 FR 28400, July 28, 1988]

PART 1229—TAXES

Subpart 1229.1—General

Sec.

1229.101 Resolving tax problems.

Subpart 1229.70—Filing of IRS Information Returns

1229.7001 General.
1229.7002 Responsibilities.

AUTHORITY: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

SOURCE: 52 FR 44547, Nov. 19, 1987, unless otherwise noted.

Subpart 1229.1—General

1229.101 Resolving tax problems.

(a) The Office of General Counsel will represent the Department in all negotiations under FAR Part 29.

(b) Communications with the Department of Justice for representation or intervention in proceedings concerning taxes shall be made only by the General Counsel.

(c) Matters involving foreign taxes requiring the assistance of other executive departments shall be forwarded to the General Counsel for appropriate action.

(d) Tax problems which cannot be solved readily by reference to FAR Part 29 shall be forwarded to the General Counsel through the administration legal counsel. The forwarding of tax problems to the General Counsel is particularly important where:

(1) The amount of tax actually or potentially involved is substantial;

(2) The legal incidence of a tax appears to be upon the United States or its property, a specific exemption pertinent to the transaction appears to exist, or a State or local tax appears to have a direct effect upon a transaction in interstate commerce;

(3) Judicial or administrative action against a contractor is threatened;

(4) The imposition or potential imposition of a tax is the result of an amendment of a tax law or a change of position by the tax authorities; or

(5) The possibility exists of obtaining refunds of taxes previously paid.

(e) Tax problems forwarded to the General Counsel shall be accompanied by the following material, which shall be furnished by the initiating office or by intervening offices:

(1) A comprehensive statement of pertinent facts, including documents and correspondence.

(2) A copy of the contract.

(3) A thorough review of the legal issues involved and recommended action to be taken.

(4) If appropriate, a statement of the problem's effect(s) on procurement policies and procedures with recommendations.

(f) Information copies of tax-related correspondence shall be sent to the procurement executive.

Subpart 1229.70—Filing of IRS Information Returns

1229.7001 General.

The Department is required to file Information Tax returns for all payments made to individuals and partnerships totaling $600 or more in a calendar year. However, reporting generally is not required by Federal agencies for payments made to corporations except in the case of medical payments. Returns must be filed for payments totaling $600 or more for:

(a) Salaries, wages, commissions, fees and other forms of compensation for services rendered by individuals not Department of Transportation employees.

(b) Rents (paid to individuals vice real estate agents).

(c) Interest penalties incurred under the Prompt Payments Act and the Contract Disputes Act.

(d) Any amount in excess of $600 that was owed to DOT and that has been declared uncollectable as a result of a defaulted obligation, not in dispute, and either:

(1) A Federal statute expiration for collection of the debt has occurred, or

(2) A formal compromise agreement has been entered into.

(e) If an amount less than the amount owed is accepted as payment in full, the difference between the amount of the debt and the settlement amount must be reported.

(f) Returns must also be prepared for payments and any related interest penalties made to corporations engaged in providing medical and health care services or in billings and collections for such services.

1229.7002 Responsibilities.

(a) *Procurement Office.* Prior to award of small purchases, contracts, and lease agreements, the procurement office is responsible for: (1) Identifying the recipients subject to reporting, (2) obtaining the appropriate informational data i.e. the taxpayer identification number or social security number, and (3) providing this data to the accounting office.

(b) *Accounting Office.* The accounting office in each operating administration that processes the payments is responsible for preparing the related IRS information returns.

[53 FR 28400, July 28, 1988]

PART 1230—COST ACCOUNTING STANDARDS

AUTHORITY: Sec. 205(c) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1230.3—CAS Contract Requirements

1230.304 Waiver.

The head of the contracting activity is authorized to waive CAS requirements for nondefense contracts.

[52 FR 44547, Nov. 19, 1987]

PART 1231—CONTRACT COST PRINCIPLES AND PROCEDURES

AUTHORITY: Sec. 205(c) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1231.1—Applicability

1231.101 Objectives.

Requests for individual deviations to the cost principles shall be submitted to the agency head. Requests for administration supplements and class deviations shall be submitted through the Senior Procurement Executive who will coordinate the request with the Civilian Agency Acquisition Council.

[52 FR 44547, Nov. 19, 1987]

PART 1232—CONTRACT FINANCING

Subpart 1232.1—General

Sec.
1232.102 Description of contract financing methods.

Subpart 1232.4—Advance Payments

1232.402 General.

Subpart 1232.5—Progress Payments Based on Costs

1232.501 General.
1232.501-2 Unusual progress payments.
1232.502 Preaward matters.
1232.502-2 Contract finance office clearance.
1232.504 Subcontracts.

Subpart 1232.7—Contract Funding

1232.702 Policy.
1232.703 Contract funding requirements.
1232.703-1 General.

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Source: 52 FR 44548, Nov. 19, 1987, unless otherwise noted.

Subpart 1232.1—General

1232.102 Description of contract financing methods.

Progress payments based on a percentage or stage of completion are authorized for use as a payment method under DOT contracts or subcontracts for construction, alteration or repair, and shipbuilding and conversion. For all other contracts, progress payment provisions shall be based on costs, as provided in FAR Subpart 32.5, and Subpart 1232.5, of this chapter, except that progress payments based on a percentage or stage of completion may be authorized by the head of the contracting activity when a determination is made that progress payments based on costs cannot be practically employed and that it is feasible to administer progress payments based on a percentage or stage of completion.

Subpart 1232.4—Advance Payments

1232.402 General.

(a) The head of the contracting activity shall have the responsibility and authority for making findings and determinations concerning advance payments, except advance payments in excess of $50,000 pursuant to Pub. L. 85-804, as amended, must be approved by the Secretary of Transportation. This authority may not be redelegated.

(b) Before requesting authorization for any advance payment arrangements, the proposed advance payments shall be coordinated with the finance office.

Subpart 1232.5—Progress Payments Based on Costs

1232.501 General.

1232.501-2 Unusual progress payments.

Requests for unusual progress payments will not be considered as a handicap or adverse factor in the award of a contract, provided the bid or proposal is not conditioned on approval of such request.

1232.502 Preaward matters.

1232.502-2 Contract finance office clearance.

The approving authority for actions specified in FAR 32.502-2 is the head of the contracting activity.

1232.504 Subcontracts.

The head of the contracting activity is the approving official for unusual progress payments to subcontractors.

Subpart 1232.7—Contract Funding

1232.702 Policy.

In addition to the requirements of (a) in the second sentence of FAR 32.702, and for fixed price incentive or redeterminable contracts, the contracting officer shall prior to award ensure that sufficient funds are available to cover the ceiling price thereof.

1232.703 Contract funding requirements.

1232.703-1 General.

Incrementally funded cost reimbursement contracts shall state:

(a) The limit of the Government's liability (i.e., amount of funds available);

(b) The portion of the contract scope (i.e., specific property or services, or period of time) for which funds are available;

(c) The proportionate cost and fee for the property, services or period identified per paragraph (b) of this section; and

(d) For contracts containing separately priced portions (e.g. Task Order contracts), the individual cost and fee for each incrementally funded portion.

PART 1233—PROTESTS, DISPUTES, AND APPEALS

Subpart 1233.1—Protests

Sec.
1233.103 Protests to the agency.
1233.104 Protests to GAO.
1233.105 Protests to GSBCA.

Subpart 1233.2—Disputes and Appeals

1233.211 Contracting officer's decision.
1233.212 Contracting officer's duties upon appeal.
1233.213 Obligation to continue performance.

AUTHORITY: Sec. 205(c) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

SOURCE: 52 FR 44548, Nov. 19, 1987, unless otherwise noted.

Subpart 1233.1—Protests

1233.103 Protests to the agency.

The Assistant Secretary for Administration is responsible for the determination authorizing award of a contract prior to resolution of a protest. Requests should be submitted for approval through the Senior Procurement Executive.

1233.104 Protests to GAO.

(a) *General.* Prior to submitting a protest response to GAO, the completed response shall be submitted to the Senior Procurement Executive for review and coordination at least two days prior to date due to GAO. (In those instances when the contractor elects to use express procedures, the completed response shall be submitted to the Senior Procurement Executive for review and coordination at least one day prior to date due to GAO.) The head of the contracting activity has the responsibility to provide GAO with the information required by FAR 33.104(a)(6).

(b) *Protests before award.* The Assistant Secretary for Administration is responsible for the determination authorizing award of a contract prior to resolution of a protest. Requests should be submitted for approval through the Senior Procurement Executive.

(c) *Protests after award.* All notices to GAO of the intent to continue contract performance in the face of such a protest shall be submitted to the Senior Procurement Executive for review and coordination. All such notices shall be submitted to the Senior Procurement Executive for review and coordination within ten days of receipt of the notification of receipt of protest from GAO, unless GAO specifies an earlier due date for such notification.

(d) *Notice to GAO.* All notices to GAO submitted in accordance with FAR 33.104(f) shall be submitted through the Senior Procurement Executive for review and approval at least two days prior to the date due to GAO.

[52 FR 44548, Nov. 19, 1987, as amended at 53 FR 28400, July 28, 1988]

1233.105 Protests to GSBCA.

Prior to submitting an answer to GSBCA, in accordance with FAR 33.105(c), the completed answer shall be submitted to the Senior Procurement Executive for review and coordination.

Subpart 1233.2—Disputes and Appeals

1233.211 Contracting officer's decision.

For Department of Transportation contracts, the Board of Contract Appeals referenced at FAR 33.211 is Department of Transportation Board of Contract Appeals (S-20), 400 7th Street, SW, Washington, DC 20590.

1233.212 Contracting officer's duties upon appeal.

Upon receipt of notice of appeal by a contractor, the contracting officer will notify administration legal counsel who will appoint an attorney to represent the Government before the DOT Board of Contract Appeals.

1233.213 Obligation to continue performance.

The contracting officer shall use the clause at FAR 52.233-1, Disputes, with its Alternate I where continued performance is vital to national security, the public health and welfare, critical/major agency programs, or other essential supplies or services whose timely reprocurement from other sources would be impracticable.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 1234—MAJOR SYSTEM ACQUISITION

AUTHORITY: Sec. 205(c) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

1234.002 Policy.

DOT's implementation of OMB Circular No. A-109 and FAR Part 34 is contained in DOT Orders 4200.9A Acquisition of Major Systems, and 4200.14B Major Systems Acquisition Review and Approval.

[52 FR 44549, Nov. 19, 1987]

PART 1235—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
1235.003 Policy.
1235.010 Scientific and technical reports.
1235.070 Contract clause.

AUTHORITY: Sec. 205(c) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

SOURCE: 52 FR 44549, Nov. 19, 1987, unless otherwise noted.

1235.003 Policy.

Recoupment. It is DOT policy in negotiating contracts under which the Government pays a part or all of the costs of research or development to recover a fair share of its investment when the product(s) thus developed or their related technology is sold or licensed to a foreign government, international organization, foreign commercial firm or domestic organization (all of which are collectively termed "customers"). (See 1235.070 of this part, for instructions on use of the recoupment clause).

1235.010 Scientific and technical reports.

When the statement of work calls for a scientific and technical report which presents interim and final results of R&D work, the contracting officer shall insure that DOT document DOT-TST-75-97 (Appendix 1 to DOT Order 1700.18 Acquisition, Publication and Dissemination of DOT Scientific and Technical Reports) is included in the contract.

1235.070 Contract clause.

Contracting officers shall insert the clause at 1252.235-71 "Recoupment of Development Costs" in contracts which:

(a) Totally or partly require design, research, development, test or experimental (D, R, D, T or E) work;

(b) Call for a product (e.g., equipment, hardware, software or a combination thereof) to be delivered as an end item; and

(c) Involve D, R, D, T or E valued at $1,000,000 or more.

PART 1236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1236.2—Special Aspects of Contracting for Construction

Sec.
1236.203 Government estimate of construction costs.
1236.206 Liquidated damages.
1236.209 Construction contracts with architect-engineer firms.

Subpart 1236.3—Special Aspects of Sealed Bidding in Construction Contracting

1236.305 Preconstruction conference.

Subpart 1236.5—Contract Clauses

1236.570 Special precautions for work at operating airports.

Subpart 1236.6—Architect-Engineer Services

1236.602 Selection of firms for architect-engineer contracts.
1236.602-1 Selection criteria.
1236.602-2 Evaluation boards.
1236.602-3 Evaluation board functions.
1236.602-4 Selection authority.
1236.602-5 Short selection processes for contracts not to exceed $10,000.
1236.603 Collecting data on and appraising firms' qualifications.
1236.606 Negotiations.
1236.606-70 General.

AUTHORITY: Sec. 205(c) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

SOURCE: 52 FR 44549, Nov. 19, 1987, unless otherwise noted.

Subpart 1236.2—Special Aspects of Contracting for Construction

1236.203 Government estimate of construction costs.

(a) The Government estimate shall be designated "For Official Use Only" unless the nature of the information therein requires a security classification, in which event it shall be handled in accordance with applicable security regulations. The "For Official Use Only" designation shall be removed only when the estimate is made public in accordance with instructions below.

(b) If the acquisition is by sealed bidding, a sealed copy of the detailed Government estimate shall be filed with the bids until bid opening. After the bids are read and recorded, the "For Official Use Only" designation shall be removed and the estimate shall be read and recorded in the same detail as the bids.

(c) If the acquisition is by negotiation, the following procedures apply:

(1) The overall amount of the Government's estimate shall not be disclosed prior to award;

(2) At the time of award the "For Official Use Only" designation on the Government's estimate shall be removed; and

(3) After award, the Government's estimate may be revealed, upon request.

1236.206 Liquidated damages.

Liquidated damages provisions are generally appropriate in construction contracts in accordance with the provisions of FAR Subpart 12.2. However, inclusion of liquidated damages provisions may be inappropriate in situations such as a construction contract consisting of repairs, alterations, or improvements where any delay in the completion would still permit the user to continue its normal function in an uninterrupted manner, without resulting in added expense to the Government.

1236.209 Construction contracts with architect-engineer firms.

(a) As provided in FAR 36.209, no contract for construction shall be awarded (as the result of either a solicited or unsolicited proposal) to the architect-engineer (A-E) firm responsible for the design of the facility to be constructed, or to any subsidiary or affiliate of that firm, without the approval of the agency head. This approval authority may not be redelegated.

(b) Unless a construction award to an A-E design firm is approved per paragraph (a) of this section, an A-E firm selected for negotiation of an architect-engineer services contract which, together with its subsidiaries or affiliates, possesses construction capabilities, shall be advised of the policy set forth in paragraph (a) of this section prior to the initiation of negotiations. The firm shall have the option of either:

(1) Declining to enter into contract negotiations in order to be eligible to compete for the related construction contract; or

(2) Entering into contract negotiations with the clear understanding that, if such negotiations are successful, the firm (including its subsidiaries or affiliates) will be ineligible to compete for the related construction contract. This understanding shall be certified by the architect-engineer firm upon the completion of negotiation, and the certification shall be entered into the official contract file.

(c) Architect-Engineer firms awarded a construction contract under 1236.209(a) shall not be engaged to supervise and inspect, on behalf of the Government, the construction of the facility under the contract.

Subpart 1236.3—Special Aspects of Sealed Bidding in Construction Contracting

1236.305 Preconstruction conference.

(a) When the contracting officer considers such action warranted, he/she shall arrange a preconstruction conference with the contractor and such subcontractors as the contractor may designate to assure that there is a clear understanding of the contract requirements (including labor standards provisions) and the rights and obligations of the parties.

(b) DOT Form F 4220.3 titled "Preconstruction Conference Agenda and Checklist", or a similar checklist, shall be used as the agenda of, or checklist for, the preconstruction conference.

Subpart 1236.5—Contract Clauses

1236.570 Special precautions for work at operating airports.

Where any acquisition will require work at an operating airport, insert the clause at 1252.236-71 in the solicitation and contract.

Subpart 1236.6—Architect-Engineer Services

1236.602 Selection of firms for architect-engineer contracts.

1236.602-1 Selection criteria.

(a) Appropriate criteria in addition to those under FAR 36.602-1(a) may include, but are not limited to, the criteria listed below. The extent to which these criteria are used will depend on the size and the complexity of the project. For instance, for small and straightforward projects, particularly those under $10,000, the data provided by the Standard Forms 254 and 255 may provide an adequate measure of the firm's experience and qualifications required for the project. However, on larger and more complex projects, the evaluation criteria should be extended to consider such factors as the firm's suggested design approach, plus methods, design ability, such as:

(1) Specialized Experience of the Firm—Relevant recent experience of the firm (including joint venture or association) in projects similar to the one being solicited.

(2) Capability and Capacity of Firm to Accomplish the Work.

(i) Relevant recent experience and technical knowledge of key project personnel, and key outside consultants.

(ii) Total number of personnel the A-E firm employs in the technical disciplines required for the proposed work.

(iii) Firm's current workload: Total number of ongoing projects, their construction value or A-E fee, and percentage of completion.

(3) Design Ability and Understanding of the Requirements.

(i) Technical approach (planning and design process, overall planning and design philosophy), possible concepts (narrative), special design opportunities, innovative design possibilities (including environmental), and provisions for the handicapped.

(ii) Understanding of, and Experience in, Energy Conservation Design.

(A) Approach to maximizing energy conservation.

(B) Project building and equipment systems that would significantly impact energy consumption.

(C) Criteria and engineering considerations to be used in building and equipment design.

(D) Examples of previously used design techniques and measure of results (in Btus consumed per square foot or energy costs).

(iii) Proposed project schedule and man-loading plan.

(iv) Quality of examples of previous work.

(v) Design Recognition: Major awards and other major recognition the firm or members of the firm have received for design excellence.

(4) Organization and Management:

(i) Project team organization and key personnel roles and responsibilities.

(ii) Project management procedures such as coordination of design effort among technical disciplines.

(iii) Methods used to control project schedule and construction cost estimates.

(iv) Quality control procedures.

(v) A-E client relationship.

(5) Past Record of Performance:

(i) DOT and other Government contracts.

(ii) Contracts with private industry.

(iii) Quality of work.

(iv) Ability to meet contractual performance/delivery schedules.

(v) Accuracy of construction cost estimates (compared to construction bids received and value of awarded construction contract).

(vi) Number, dollar amount and reason for construction change orders.

(vii) A-E/client relationship. (For Government contracts, the above information is available from SF 1421—Performance Evaluation (A-E)).

(b) If design competition is to be used (see FAR 36.602-1(b)), written approval by the agency head shall be obtained prior to soliciting proposals.

(c)(1) The following evaluation criterion reflects Department policy and shall be used in the A-E evaluation process for A-E acquisitions above $10,000. It shall be used separately from the other criteria in terms of bonus or penalty points to the basic numerical evaluation rating.

(2) Minority/Women Employment—Percentage of minority employees in all job classifications and pay scales, noting the percentage of minorities in the immediate locality and general surrounding area. In addition, the number of women in all job classifications and pay scales shall also be considered.

1236.602-2 Evaluation boards.

Heads of contracting activities shall establish an ad-hoc architect-engineer evaluation board for each acquisition of architect-engineer (A-E) services. This authority may be redelegated not lower than one level above the contracting officer. For acquisitions where the estimated A-E fee is $200,000 or more, the HCA shall notify the Director of Administrative Services and Property Management, M-40, prior to establishing the A-E evaluation board. For A-E acquisitions above $10,000, the following requirements apply in addition to those set forth in FAR 36.602-2:

(a) The A-E evaluation board shall be composed of the following members:

(1) One member with experience in acquisition of A-E services. This member will normally be the contracting officer or the contract negotiator.

(2) One or more members with technical experience in the fields of architecture, engineering or construction. These members will normally be from the organization responsible for establishing the A-E work requirements.

(3) One member with technical knowledge of the functional (user) requirements of the project.

(4) One member from OST if appointed by the Director of Administrative Services and Property Management, M-40, where the A-E fee is $200,000 or more.

(5) Other special members are as deemed necessary.

(b) A-E board members may be appointed from among highly qualified professional employees of other Government agencies or the private sector who are engaged in the practice of architecture, engineering, construction or related professions. When a proposed architect-engineer evaluation board includes a member from the private sector, the Director of Administrative Services and Property Management, M-40, shall be notified before the board is established.

(c) Administrations that do not have:

(1) Personnel experienced in A-E selection procedures; or

(2) Personnel with the necessary technical disciplines to evaluate A-E firms for a particular project, may request the assistance of the Director of Administrative Services and Property Management, M-40, in establishing the A-E evaluation board.

1236.602-3 Evaluation board functions.

For A-E acquisitions above $10,000, the A-E evaluation board shall perform the following functions in addition to, or in combination with, those of FAR 36.602-3, and in the sequence indicated:

(a) Analyze the nature and scope of the project work requirements.

(b) Develop the evaluation criteria and rating systems to be used in screening firms for the preselection list and in the final selection. The screening criteria should be based only on information provided by the Standard Forms 254 and 255.

(c) Prepare the public announcement for the project and provide it to the contracting office for publication.

(d) Screen the Standard Forms 254 and 255 and any other qualification data received in response to the public announcement of the project and prepare a preselection list of the best qualified firms for further consideration. The preselection list must consist of at least three firms.

(e) When appropriate, obtain in writing more specific and detailed qualification, experience and past performance data (see 1236.602-1(a)) not provided by the Standard Forms 254 and 255 which are needed to evaluate the firms using the criteria established for final selection. The firms should also be provided with a description of the nature and the scope of work to be accomplished to assist the firm in its response. The A-E firms shall be advised not to submit price proposals, design sketches, drawing or design data at the time the qualification and past performance information is due.

(f) Conduct interviews with the firms on the preselection list. As part of the interview, the architect-engineer firms shall be given an opportunity to make an oral presentation of their qualifications and experience, proposed project approach and any other relevant data. The project manager and other key project personnel and consultants proposed by a firm should participate in the interview.

(g) Whenever it is practical and advantageous, the A-E evaluation board should visit the offices of the A-E firms on the preselection list to inspect their facilities and work environments, to meet members of the proposed project team, and to see both work in progress and additional examples of completed projects.

(h) Review of Standard Forms 254 and 255 and other experience and qualification data for each firm on the preselection list, and perform a systematic numerical evaluation rating of the firms.

(i) Develop a rank order listing of at least three firms considered most highly qualified to perform the required work, based on the numerical evaluation ratings of the firms on the preselection list.

(j) Prepare a report to the HCA, or the official holding authority to establish A-E boards, which shall include in sufficient detail:

(1) The extent of the board's review and evaluation;

(2) The list described in paragraph (i) of this section;

(3) Recommendations; and

(4) Considerations on which the recommendations are based.

1236.602-4 Selection authority.

(a) The HCA or the official holding authority to establish A-E boards shall review the recommendations of the A-E evaluation board. The recommendations of the A-E evaluation board will normally be approved, unless the report does not adequately support the recommendations. If the recommendations are not approved, the A-E evaluation board shall be required to reconvene until an acceptable set of recommendations is agreed upon.

(b) The approved report shall serve as authorization for the contracting officer to commence negotiations with the A-E firm ranked number one by the A-E evaluation board.

1236.602-5 Short selection processes for contracts not to exceed $10,000.

Administrations are authorized to use either of the short selection processes of FAR 36.602-5.

1236.603 Collecting data on and appraising firms' qualifications.

Because it is the Department's policy to establish ad hoc evaluation boards instead of permanent boards to select architect-engineers, each administration shall establish, or designate, an office or offices to meet the requirements of FAR 36.603(a). Administrations may choose not to maintain A-E qualification data files and arrange to use existing data files of other DOT organizations including the files available in the Office of Acquisition and Grant Management, OST (M-60). If any organization chooses this option, it should foward all A-E qualification data it receives from interested firms to the organization maintaining the data file.

[52 FR 44549, Nov. 19, 1987, as amended at 53 FR 28400, July 28, 1988]

1236.606 Negotiations.

1236.606-70 General.

The limitation on architect-engineer fees of 6% of the estimated construction cost applies to all services that are an integral part of the production and delivery plans, designs, drawings and specifications of a construction project. (See FAR 15.903(d).) The limitation, however, does not apply to the cost of investigative and other services including but not limited to the following:

(a) Development of program requirements (scope of work).

(b) Determination of project feasibility.

(c) Preparation of drawings of an existing facility, where current drawings are not available.

(d) Subsurface investigations (soil borings).

(e) Structural, electrical and mechanical investigations of an existing building, where current information is not available.

(f) Surveys: topographic, boundary, utility.

(g) Preparation of models, color renderings, photographs or other presentation materials.

(h) Travel and per diem for special presentations.

(i) Supervision and inspection of construction.

(j) Preparation of operating and maintenance manuals.

(k) Master planning.

PART 1237—SERVICE CONTRACTING

Subpart 1237.1—Service Contracts—General

Sec.
1237.104 Personal services contracts.
1237.104-70 Taxes.
1237.104-71 Administrative treatment.
1237.110 Solicitation provisions and contract clauses.

Subpart 1237.2—Consulting Services

1237.204 Policy.
1237.205 Management controls.
1237.270 Contracts for stenographic reporting services.

Subpart 1237.70—Mortuary Services

1237.7000 Scope of subpart.
Sec.
1237.7001 Acquisition by contract.
1237.7002 Area of performance.
1237.7003 Schedule format.
1237.7004 Small purchases.
1237.7005 Solicitation provisions and contract clauses.

AUTHORITY: Sec. 205 (C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

SOURCE: 52 FR 44552, Nov. 19, 1987, unless otherwise noted.

Subpart 1237.1—Service Contracts—General

1237.104 Personal services contracts.

1237.104-70 Taxes.

Where the individual is to render personal services, the compensation generally is subject to FICA (Social Security), FUTA (Unemployment Compensation), and Federal income withholding taxes. It may also be necessary to report or withhold state income tax under 5 U.S.C. 5517. The contracting officer shall take appropriate steps in coordination with the cognizant personnel office to have deductions and reports made where required by law.

1237.104-71 Administrative treatment.

Individuals who are to render personal services under contract are charged against personnel ceilings in the same way as experts and consultants employed by excepted appointments. Also, the cognizant personnel office must maintain certain records on individuals who render personal services. Therefore, the contracting officer shall effect necessary coordination with the cognizant personnel office before award of a contract for personal services and may also designate the appropriate personnel officer as her or his representative for the purpose of obtaining necessary data from the contractor for tax withholding purposes, for suitability investigation under Executive Order 10450, and for administering applicable conflict of interest provisions.

1237.110 Solicitation provisions and contract clauses.

Contracting officers shall insert the provision at 1252.237-71 'Qualifications of Employees" in all solicitations and contracts for services which require performance at a Government facility.

Subpart 1237.2—Consulting Services

1237.204 Policy.

In addition to the prohibitions regarding consulting services listed at FAR 37.204(c), the following apply:

(a) Consulting services shall normally be obtained only on an intermittent or temporary basis; repeated or extended arrangements are not to be entered into except under extraordinary circumstances.

(b) Grants and cooperative agreements shall not be used to acquire consulting services.

1237.205 Management controls.

DOT management controls, including approvals required, are set forth in DOT Order 4200.15, Criteria and Guidelines for the Use of Consulting Services.

1237.270 Contracts for stenographic reporting services.

Stenographic reporting services normally are provided by Federal Government employees appointed under the usual civil service procedures. However, these services may be acquired by contract from individuals or firms pursuant to 5 U.S.C. 3109 or other statutory authority where there are variable requirements or insufficient qualified personnel, and necessity of economy to the Government demands acquisition by contract. Such contracts normally shall be written on an end-product basis and payment made according to delivered items (e.g., number of copies of transcript, words per page, etc.), and the contractor ordinarily shall be required to furnish the necessary material (typewriter, paper, bindings, etc.). These contracts are subject to all provisions of this subpart.

Subpart 1237.70—Mortuary Services

1237.7000 Scope of subpart.

This subpart is applicable only to the Coast Guard. It sets forth acquisition procedures peculiar to contracts for mortuary services (the care of remains) of Coast Guard personnel.

1237.7001 Acquisition by contract.

(a) Where an existing contract for the care of remains is not available for Coast Guard use, acquisition of such services shall be accomplished by sealed bidding except where negotiation is authorized.

(b) The contract format and terms and conditions set forth in this subpart are appropriate for inclusion in a requirements type contract. They should be altered as deemed necessary by the contracting officer to fit a different contract type or acquisition situation.

1237.7002 Area of performance.

Each contract for care of remains shall clearly define the geographical area covered by the contract. The area shall be determined by the activity entering into the contract in accordance with the following general guidelines. It shall be an area using political boundaries, streets, and other features such as demarcation lines. Generally, this should be a size roughly equivalent to the contiguous metropolitan or municipal area enlarged to include the activities served. In the event the area of performance best suited to the needs of a particular contract is not large enough to include a carrier terminal commonly used by people within such area, the contract area of performance shall specifically state that it includes such terminal as a pickup or delivery point.

1237.7003 Schedule format.

Set forth below is an example of a schedule format suitable for use in solicitations.

Item No. and supplies, services, and transportation	Estimated quantity	Unit	Unit price	Amou
1. For a type I casket, standard size, supplies and services in accordance with specifications		(1)		
2. For a type II casket, standard size, supplies and services in accordance with specifications		(1)		
3. For a shipping case, standard size, supplies and services in accordance with specifications. (For use with items 1 and 2)		(1)		
4. For a type I casket, exceeding standard size, supplies and services in accordance with specifications		(1)		
5. For type II casket, exceeding standard size, supplies and services in accordance with specifications		(1)		
6. For shipping case, exceeding standard size, in accordance with specifications. (To be used with items 4 and 5)		(1)		
7. For transportation of remains, in accordance with specifications and as provided for in parts (b) and (c) of the area of performance clause of this contract		(2)		

[1] Each.
[2] Loaded mile.

1237.7004 Small purchases.

Purchases under $25,000 which cannot be covered by any existing contract shall be handled in accordance with FAR Part 13.

1237.7005 Solicitation provisions and contract clauses.

(a) All the regulatory citations in this 1237.7005 are to the Department of Defense (DOD) FAR Supplement (except that to FAR 52.245-4 in paragraph (e) of this section).

(b) The contracting officer shall insert the DOD provision at 252.237-7100, "Award to Single Bidder," in sealed bid solicitations for mortuary services contracts.

(c) The contracting officer shall insert the DOD provision at 252.237-7101, "Award to Single Offeror," in negotiated solicitations for mortuary services contracts.

(d) The contracting officer shall insert the following DOD clauses in mortuary services solicitations and contracts except those for port of entry requirements:

252.237-7102, Requirements;
252.237-7103, Area of Performance;
252.237-7104, Specifications;
252.237-7105, Using Activities;
252.237-7106, Delivery Order and Invoices;
252.237-7107, Delivery and Performance;
252.237-7108, Subcontracting;
252.237-7109, Additional Default Provisions;
252.237-7110, Group Interment;
252.237-7111, Professional Requirements;
252.237-7112, Facility Requirements;
252.237-7113, Preparation History.

(e) In port of entry solicitations and contracts for mortuary services, the contracting officer shall insert the Government-Furnished Property (Short Form) clause at FAR 52.245-4 and all of the DOD clauses in paragraph (d) of this section except the "Area of Performance" and "Facility Requirements" clauses.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1242—CONTRACT ADMINISTRATION

Subpart 1242.1—Interagency Contract Administration and Audit Services

Sec.
1242.101 Policy.

Subpart 1242.2—Assignment of Contract Administration

1242.203 Retention of contract administration.
1242.203-70 Contract clauses.

Subpart 1242.7—Indirect Cost Rates

1242.705 Final indirect cost rates.
1242.705-2 Auditor determination procedure.
1242.708 Quick-closeout procedure.

Subpart 1242.12—Novation and Change-of-Name Agreements

1242.1202 Responsibility for executing agreements.
1242.1203 Processing agreements.

Authority: Sec. 205(c) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Source: 52 FR 44553, Nov. 19, 1987, unless otherwise noted.

Subpart 1242.1—Interagency Contract Administration and Audit Services

1242.101 Policy.

It is the policy of the Department of Transportation to make optimum use of the contract administration, audit and related support functions available from the Department of Defense and other Government agencies. However, technical direction of all contracts awarded, regardless of the agency responsible for administration, shall remain with DOT.

Subpart 1242.2—Assignment of Contract Administration

1242.203 Retention of contract administration.

(a) Except as provided elsewhere in FAR 42.203, DOT contracting officers shall retain contract administration responsibility when it is clear that the contracting office can best perform this function.

(b) In all cases, the contracting officer shall retain the responsibility for contract administration related to the clause entitled "Contractor Testimony" (see 1242.203-70).

1242.203-70 Contract clauses.

(a) The contracting officer shall insert the clause at 1242.242-71 "Contractor Testimony" in all solicitations and contracts issued by the National Highway Traffic Safety Administration. The clause may be used by other administrations, as deemed appropriate.

(b) The contracting officer shall insert the clause at 1252.242-72 "Dissemination of Contract Information" in all DOT contracts except those whose statement of work requires the release or coordination of information.

(c) The contracting officer may use the clause at 1252.242-70 "Dissemination of Information—Educational Institutions" in lieu of the clause at 1252.242-72 in DOT research contracts with educational institutions, except those whose statement of work requires the release or coordination of information.

Subpart 1242.7—Indirect Cost Rates

1242.705 Final indirect cost rates.

1242.705-2 Auditor determination procedure.

DOT contracting officers shall request final indirect cost rate determinations in accordance with DOT Order 8000.7, Audit Services for DOT Contracting Offices.

[53 FR 28400, July 28, 1988]

1242.708 Quick-closeout procedure.

DOT contracting officers may utilize quick-closeout procedures, in accordance with 1204.804-5(b), on contracts not exceeding $1,000,000 provided the stipulations at FAR 42.708(a) (1) through (3) are met.

[52 FR 44553, Nov. 19, 1987, as amended at 53 FR 28400, July 28, 1988]

Subpart 1242.12—Novation and Change-of-Name Agreements

1242.1202 Responsibility for executing agreements.

When more than one administration has outstanding contracts with a contractor seeking a novation or change of name agreement, a single agreement covering all such contracts shall be executed by the administration having the largest unsettled (unbilled plus billed but unpaid) dollar balance.

1242.1203 Processing agreements.

(a) The administration processing a proposed novation agreement shall promptly provide notice of the proposed agreement, including the list of contracts as required by FAR 42.1203(b)(2), to the other administrations having contracts with the contractor or contractors concerned. Such notice shall be transmitted to the appropriate addressee listed in 1242.1202 above. Within 30 days after receipt of such notice, the administration(s) may submit comments to the processing administration. These comments shall be considered prior to execution of the proposed agreement. The absence of comment from an administration within 30 days after its receipt of notice of a proposed novation agreement shall be construed as approval by that administration.

(b) Where substantial alteration or additions to the formats set forth in FAR 42.1204 and FAR 42.1205 are considered appropriate by the administration processing the proposed agreement, that administration shall coordinate the agreement with the other administrations affected by the agreement prior to execution. Any objection shall be resolved before the agreement is executed.

(c) A signed copy of the executed novation agreement or change of name agreement shall be forwarded to the contractor. A signed copy shall be retained in the administration executing the agreement. Where more than one administration is involved, two copies of the agreement shall be distributed to the appropriate addressee listed in 1242.1202.

(d) After execution and distribution of an agreement, a modification (Standard Form 30) shall be prepared by the processing activity incorporating a summary of the agreement and attaching a complete list of the contracts affected. For single administration agreements, three copies of the Standard Form 30 shall be furnished for each contract to the contracting offices concerned and, for multi-administration agreements, to the appropriate addressee listed in 1242.1202.

PART 1243—CONTRACT MODIFICATIONS

AUTHORITY: Sec. 205(c) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c). 48 CFR 1.301; 49 CFR 1.59).

Subpart 1243.70—Scope of Work

1243.7001 Policy.

The contracting officer shall review all delivery orders and contract modifications which order, add, define, or change work to be performed under an existing contract. For all such delivery orders and contract modifications, the contracting officer shall ensure that the items or services being ordered are within the scope of work set forth in the basic contract.

[53 FR 28400, July 28, 1988]

PART 1244—SUBCONTRACTING POLICIES AND PROCEDURES

AUTHORITY: Sec. 205(c), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)); 48 CFR 1.301; 49 CFR 1.59.

Subpart 1244.3—Contractors' Purchasing Systems Reviews

1244.302 Requirements.

In those cases where contractor purchasing system review (CPSR) approval may be required, the contracting officer will obtain the following information from prospective contractors:

(a) Date of most recent CPSR;

(b) Name, address, and telephone number of the administrative contracting officer who conducted the most recent CPSR; and

(c) Expected total dollar value of negotiated sales to the Government over the next 12 month period.

[52 FR 44554, Nov. 19, 1987]

PART 1245—GOVERNMENT PROPERTY

Subpart 1245.1—General

Sec.
1245.101 Definitions.
1245.102 Policy.
1245.102-70 Reporting of contractor-held Government property by DOT administrations.
1245.102-71 Contract property control file.
1245.102-72 Special test equipment and special tooling.
1245.104 Review and correction of contractors' property control system.
1245.104-70 Evaluation and approval of contractors' property control system.
1245.104-71 Review of contractors' property control system during contract performance.

Subpart 1245.3—Providing Government Property to Contractors

1245.302-1 Policy.

Subpart 1245.4—Contractor Use and Rental of Government Property

1245.407 Non-Government use of plant equipment.

Subpart 1245.5—Management of Government Property in the Possession of Contractors

1245.501 Definition.
1245.502-1 Receipts for Government property.
1245.505 Records and reports of Government property.
1245.505-4 Records of special tooling and special test equipment.

Sec.
1245.505-5 Records of plant equipment.
1245.505-11 Records of transportation and installation costs of plant equipment.
1245.505-14 Reports of Government property.
1245.505-70 Solicitation provisions and contract clauses.
1245.506 Identification.
1245.508 Physical inventories.

Subpart 1245.6—Reporting, Redistribution, and Disposal of Contractor Inventory

1245.603 Disposal methods.
1245.603-70 Plant clearance function.
1245.607 Scrap.
1245.607-2 Recovering precious metals.
1245.608-3 Agency screening.
1245.608-5 Special items screening.
1245.610-4 Contractor inventory in foreign countries.

AUTHORITY: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)); 48 CFR 1.301; 49 CFR 1.59.

SOURCE: 52 FR 44554, Nov. 19, 1987, unless otherwise noted.

Subpart 1245.1—General

1245.101 Definitions.

"Capitalized equipment" as used in this part, means personal property (plant equipment) of a nonexpendable nature having a unit cost of $5,000 or more.

"Noncapitalized equipment" as used in this part, means personal property (plant equipment) of a nonexpendable nature having a unit acquisition cost of $50 or more but less than $5,000, and other items of personal property regardless of cost when so designated by the Government.

[53 FR 28401, July 28, 1988]

1245.102 Policy.

1245.102-70 Reporting of contractor-held property by DOT administrations.

By October 31 each year, each DOT administration shall report the following information to the Director, Office of Administrative Services and Property Management (M-40).

(a) Name and address of each contractor with DOT property in its possession, or in the possession of their subcontractors (do not include grants, cooperative agreements, interagency agreements, or agreements with state or local governments).

(b) Contract number of each DOT contract with Government property.

(c) Date contractor's property management system was approved and by whom (DOT Office, Defense Contract Administration Service, etc.).

(d) Separate dollar totals of DOT real property, capitalized equipment, and material maintained in stocks (when value is $50,000 or more) as reported in the contractor's annual financial report for each DOT contract administered by the contracting activity.

1245.102-71 Contract property control file.

Upon award of a contract, the property administrator will establish a contract property control file which will include as a minimum:

(a) Copy of the contract or extract of provisions thereof establishing requirements for property administration (except when the property control file is maintained as an adjunct to the contract working file);

(b) Letters designating authorized representatives of the contracting officer for property matters;

(c) Report of initial review, evaluation, and approval of the contractor's property control system;

(d) Record of visits, property system examinations and analyses, and appropriate work papers;

(e) Documents evidencing the furnishings of Government property;

(f) Contractor's receipts for Government furnished property;

(g) Contractor's notices of acquisitions of contractor purchased or fabricated Government property;

(h) Contractor's physical inventory and financial property reports as prescribed;

(i) Documents evidencing the removal of Government property from the custody of the contractor, the transfer of Government property to another contract or another contractor, and the disposal of Government property;

(j) Documents evidencing relief of the contractor from responsibility for Government property due to loss, damage, destruction, or unreasonable wear or deterioration or unjustifiable consumption in the performance of the contract;

(k) Any other correspondence affecting that status of Govenment property under the contract; and

(l) Statement of closure of the contract property account.

1245.102-72 Special test equipment and special tooling.

Special test equipment and special tooling are not recognized in DOT as separate categories of property (see 1245.505-4). Property of this nature will be controlled in the same way as other items of plant equipment.

1245.104 Review and correction of contractors' property control system.

When review of the contractor's property control system is not delegated to DOD, the DOT contracting officer or property administrator will conduct the review as required by 1245.104-70 and 1245.104-71.

1245.104-70 Evaluation and approval of contractors' property control system.

(a) The choice of the methods to be used for evaluation and approval of the contractor's property control system is a matter of judgment by the property administrator, predicated on the nature and amount of Government property involved in any particular contract. Regardless of the methods used, it is the responsibility of the property administrator to determine that the contractor's system will meet the requirements of FAR Subpart 45.5, and of Subpart 1245.5 and other contract requirements, as appropriate.

(b) It is normal contractor practice to provide for the control of property by means of written procedures that communicate the organization's standards, techniques, and instructions to operational personnel for uniform application. However, depending on the number of contractor employees and the nature, quantity, and value of the property, a contractor may not need written procedures for effective management of Government property. In such cases, the property administrator, if he/she agrees that written procedures are not required, will evaluate the adequacy of the contractor's system on the basis of the contractor's explanation of its controls and prepare a brief description of the applicable procedures for inclusion in the contract property control file.

(c) Upon completing the evaluation of the contractor's system, the property administrator will prepare a written summary of findings to support approval of the system or requirement for corrective action prior to such approval. The property administrator will forward to the contractor a listing of any deficiencies found as a result of the evaluation. The contractor will be requested to indicate, within 30 days after receipt of the listing, its willingness to correct the deficiencies or to forward to the property administrator a statement of its position.

(d) When the property administrator is not successful in obtaining compliance with contract requirements, he/she will advise the contracting officer. The contracting officer shall take appropriate action in accordance with FAR 45.104(c). If the contractor fails to make satisfactory progress for correction of the deficiencies in accordance with the schedule, the contracting officer will so inform the contractor in writing, and state that approval of its property control system is withheld or withdrawn, as the case may be. A copy of that advisement shall be provided to the property administrator.

(e) When the contractor's property control system is acceptable, the property administrator will so advise the contractor in writing. When the contract involves Government property at subcontractor plants or prime contractor secondary locations, and the controls for the property at such locations have been determined to be adequate, the approval will be expanded to include the procedures governing Government property at such locations.

1245.104-71 Review of contractors' property control system during contract performance.

(a) While the contractor has an incurred obligation to comply with the property control requirements of the contract, it is incumbent upon the Government to ensure that the contractor does in fact comply. The preferred method for carrying out this responsibility is for the Government to periodically conduct system reviews at the contractor's premises. The need for, and frequency of, such reviews should be based on case-by-case determinations, considering the particular circumstances relative to a given contract or contractor. When the property administrator feels that a system review is necessary, then he/she must arrange for the conduct of such a review by an appropriate means.

(b) Notwithstanding the requirements of paragraph (a) of this section, it is the continuing responsibility of the property administrator to be alert to any indications that the contractor's property control system may be deficient. Examples of such indications are as follows:

(1) Failure of the contractor to acknowledge receipt of Government furnished property;

(2) Failure of the contractor to provide notices of contractor acquisitions of Government property when the contract provides for such acquisition;

(3) Failure of the contractor to submit the annual financial property and physical inventory reports specified in 1245.505-14 and 1245.508;

(4) Discrepancies in contractor's records and weaknesses in control as reflected by the contractor's physical inventory reports;

(5) Contractor's financial property reports do not reconcile with DOT financial control accounts;

(6) Analysis of contractor's costs indicates consumption of material in excess of that considered reasonable;

(7) Inability of the contractor to furnish property listings when requested to do so; or

(8) Analysis of contractor's request for relief of responsibility due to loss or damage indicates inadequate control.

(c) When the property administrator has reason to believe that the contractor's property control system is deficient or inadequate, the property administrator must take prompt action to obtain correction of such problems. In some cases, discussions with the contractor may suffice. In other cases, it may be necessary to arrange for an on-site system review as discussed in paragraph (a) of this section. Another alternative is to request the conduct of an audit by the appropriate Government contract audit activity. If the situation demands, the procedures set forth in 1245.104-70(d) will be applied.

(d) Records and accounts of Government property will be audited by the Government as frequently as conditions warrant or as may be specifically requested by the contracting officer. Audits may take place at any time during the performance of the contract, upon completion or termination of the contract, or at any time thereafter. Audits will include records maintained by the contractor and Government-maintained records for the property involved. Government personnel and the contractor are required to make all property records, including correspondence related thereto, available to the auditors.

Subpart 1245.3—Providing Government Property to Contractors

1245.302-1 Policy.

Contracting officers have been designated to make determinations required by FAR 45.302-1(a)(4) on providing Government facilities.

Subpart 1245.4—Contractor Use and Rental of Government Property

1245.407 Non-Government use of plant equipment.

The prior written approval of the contracting officer is required for any non-Governmental use of active Government-owned plant equipment. Before non-Government use exceeding 25 percent may be authorized, prior approval of the head of the contracting activity shall be obtained.

Subpart 1245.5—Management of Government Property in the Possession of Contractors

1245.501 Definition.

To supplement the definition at FAR 45.501, "property administrator," as used in this subpart, means an authorized representative of the contracting officer, when designated, or the contracting officer.

1245.502-1 Receipts for Government property.

Immediately upon receipt of any Government-furnished property, the contractor shall sign and return the Government transfer document to the property administrator. For contractor-acquired capitalized equipment, the contractor shall submit itemized reports as a condition for the reimbursement of costs incurred in the purchase or fabrication of such property. Each item shall be adequately described, including unit cost. Reports shall be provided by the contractor not later than the time it submits its application for payment (public voucher) for the property. Upon request of the Government, the contractor shall submit supporting data for any material cost or noncapitalized equipment included in the voucher.

1245.505 Records and reports of Government property.

1245.505-4 Records of special tooling and special test equipment.

Since special test equipment and special tooling are not recognized in DOT as separate categories of property, no special property management controls will be established. Property of this nature shall be controlled in the same way as other items of "capitalized" and "noncapitalized" equipment.

1245.505-5 Records of plant equipment.

The individual records requirements of FAR 45.505 apply to capitalized plant equipment. Summary stock records may be maintained for noncapitalized plant equipment except where the property administrator determines that individual item records are necessary for effective control, calibration or maintenance.

1245.505-11 Records of transportation and installation costs of plant equipment.

The requirements of FAR 45.505-11 apply to capitalized plant equipment.

1245.505-14 Reports of Government property.

(a) *Control system.* The contractor's property control system shall be such as to provide, at any time, the dollar amount of Government property for which it is accountable under each contract in the following classifications:

(1) Real property;

(2) Capitalized equipment;

(3) Noncapitalized equipment; and

(4) Material maintained in stocks.

The contractor's accounts shall be susceptible to reconciliation in totals and subtotals as to whether contractor-acquired or Government-furnished.

(b) *Submissions of financial property reports.* (1) The contractors shall prepare a report as of July 31 each year, for each contract, showing the dollar amount of Government real property, capitalized equipment, and material maintained in stocks (when value is $50,000 or more) in the possession of the contractor and his subcontractors. Reports shall be prepared in the format shown below and shall be furnished to the property administrator not later than September 15 each year. Subcontract reports shall be consolidated with prime contract reports. The contractor shall certify that the reports have been reconciled and are in balance with the contract property records. If specifically requested by the property administrator, the contractor shall submit similar reports for Government noncapitalized equipment and material maintained in stocks when value is less than $50,000.

(2) Financial property report format.

	Real property	Capitalized equipment	Material ($50,000 or over)	Total
Balance beginning of period				
Acquisition during period				
Government furnished				
Contractor acquired				
Dispositions during period				
Government furnished				
Contractor acquired				
Balance end of period				

(3) Contractor's reports of physical inventory shall be submitted on an annual basis as set forth in 1245.508.

1245.505-70 Solicitation provisions and contract clauses.

Contracting officers shall insert the clause at 1252.245-70, Government Property Reports, in all solicitations and contracts which include either FAR clause 52.245-2, Government Property (Fixed Price Contracts) or 52.245-5, Government Property (Cost-Reimbursement, Time and Material, or Labor Hour Contracts).

[53 FR 28401, July 28, 1988]

1245.506 Identification.

The requirements of FAR 45.506(b) apply to noncapitalized Government property. The requirements of FAR 45.506(c) apply to capitalized government property.

1245.508 Physical inventories.

(a) Annual inventories. The contractor shall perform an annual physical inventory of the following categories of Government property in its possession or control and shall require such inventories of any subcontractors that are in possession of Government property provided under the contract:

(1) Capitalized property;

(2) Noncapitalized property;

(3) Material maintained in stocks.

(b) Reporting results of annual inventories. Within 30 days after the completion of an annual inventory, the contractor shall submit the following information to the property administrator:

(1) A list, on both a quantitative and monetary basis, of all discrepancies disclosed by the inventory in each category of Government property.

(2) A signed statement that physical inventory of Government property under the contract was completed on a specified date and that the contractor's official property records were found to be in agreement with the physical inventory except for the discrepancies noted; and

(3) If specifically requested by the property administrator, a list of all items of capitalized equipment.

Subpart 1245.6—Reporting, Redistribution, and Disposal of Contractor Inventory

1245.603 Disposal methods.

1245.603-70 Plant clearance function.

If the plant clearance function has not been formally delegated to another Federal agency, the contracting officer must assume all responsibilities of the plant clearance officer identified in FAR 45.6.

1245.607 Scrap.

1245.607-2 Recovering precious metals.

DOT Order 4430.5, Recovery and Utilization of Precious Metals, establishes procedures for the recovery and acquisition of precious metals.

1245.608-3 Agency screening.

Excess and residual contract inventory is subject to the same Departmental redistribution requirements as are prescribed for internal Departmental excess property. Accordingly, contracting officers shall assure that excess and residual contract property are screened within the Department in accordance with DOT Order 4600.1E, Redistribution of Excess Personal Property.

1245.608-5 Special items screening.

Excess automatic data processing equipment shall be screened internally within the Department as required by DOT Order 4000.6A, Reassignment of Excess Automatic Data Processing Equipment.

1245.610-4 Contractor inventory in foreign countries.

DOT contractor inventory located in foreign countries shall be utilized and disposed of in accordance with FPMR 101-43.5.

PART 1246—QUALITY ASSURANCE

Subpart 1246.6—Material Inspection and Receiving Reports

Sec.

1246.601 Material inspection and receiving reports.

Subpart 1246.7—Warranties

1246.701 Definitions.
1246.702 General.
1246.703 Criteria for use of warranties.
1246.704 Authority for use of warranties.
1246.705 Limitations.
1246.706 Warranty terms and conditions.
1246.770 Use of warranties in major system acquisitions by Coast Guard.
1246.770-1 Policy.
1246.770-2 Tailoring warranty terms and conditions.
1246.770-3 Warranties on government-furnished property.
1246.771 Cost benefit analysis.
1246.772 Waiver and notification procedures.

AUTHORITY: 40 U.S.C. 486(c); Pub. L. 99-190 (10 U.S.C. 2304 note); 48 CFR 1.301; 49 CFR 1.59.

Subpart 1246.6—Material Inspection and Receiving Reports

1246.601 Material inspection and receiving reports.

Each administration shall use FAA Form 256 or an alternate procedure.

[52 FR 44557, Nov. 19, 1987]

Subpart 1246.7—Warranties

SOURCE: 53 FR 30177, Aug. 10, 1988, unless otherwise noted.

1246.701 Definitions.

"At no additional cost to the United States," as used in this subpart, means at no increase in price for firm-fixed-price contracts or at no increase in target or ceiling price for fixed price incentive contracts (see FAR 46.707) or at no increase in estimated cost or fee for cost-reimbursement contracts.

"Defect," as used in this subpart, means any condition or characteristic in any supplies or services furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

"Design and manufacturing requirements," as used in this subpart, means structural and engineering plans and manufacturing particulars, including precise measurements, tolerances, materials and finished product tests for the major system being produced.

"Major system," as used in this subpart, means a system or major subsystem used directly by the agency to carry out its mission(s), as defined by DOT Order 4200.14B, Major Systems Acquisition Review and Approval. This term does not include related support equipment, such as ground-handling equipment, training devices and accessories thereto; unless an effective warranty for the system would require inclusion of such items. This term does not include commercial items sold in substantial quantities to the general public as described in FAR 15.804-3(c).

"Performance requirements," as used in this subpart, means the operating capabilities, maintenance, and reliability characteristics of a system that are determined to be necessary for it to fulfill the requirement for which the system is designed.

"Prime contractor," as used in this subpart, means a party that enters into an agreement directly with the United States to furnish a system or a major subsystem.

1246.702 General.

In addition to the considerations outlined in FAR 46.702, the following areas should be addressed by all DOT administrations in relation to the use of warranties in DOT contracts:

(a) Planning is an essential step in obtaining an effective warranty and should begin early enough to address warranty requirements during the development of the item. Therefore, consideration of warranty provisions and their impact shall be included within the comprehensive acquisition planning process required by FAR Part 7 as implemented by DOT Order 4200.14B, Major Systems Acquisition Review and Approval.

(b) The acquisition cost of a warranty may be included as part of an item's price when cost or pricing data will clearly define cost of the warranty to the Government, or may be set forth as a separate contract line item.

(c) Each administration within DOT shall establish a tracking and enforcement system, as appropriate, to identify items covered, to provide information to Government personnel about enforcing the warranty provisions, and accumulate data relative to warranty costs. Each administration shall make an annual report to the Director of Acquisition and Grant Management, on warranty related costs and enforcement experience, no later than 60 days after the end of each fiscal year.

1246.703 Criteria for use of warranties.

(a) Acquisition of warranties in the procurement of supplies that do not meet the definition of a major system (e.g., spare, repair, or replenishment parts) is governed by FAR 46.703 for all DOT administrations. Contracting officers should negotiate a warranty that meets or exceeds the requirements of section 1246.706 of this part where such warranty is advantageous and conforms to Departmental policy.

(b) The use of warranties in the procurement of major systems by the United States Coast Guard is mandatory, unless a waiver is authorized. The use of warranties in major system acquisitions by DOT administrations other than the Coast Guard is voluntary.

(c) Warranties should be obtained only when they are cost beneficial. In order to determine whether use of a warranty would be cost beneficial, an analysis must be performed to compare the benefits to be derived from the warranty with its acquisition and administration costs, and the contract file documented accordingly. The analysis should examine the procurement's life cycle costs, both with and without a warranty. Where possible, a comparison should be made with the costs of obtaining and enforcing similar warranties for similar supplies or services.

1246.704 Authority for use of warranties.

(a) For any contract entered into by an operating administration, other than a contract entered into by the Coast Guard for major system acquisitions, the contracting officer shall determine if a warranty clause is appropriate in accordance with 1246.703(c), prior to solicitation of a requirement. If a warranty is determined to be appropriate, he/she shall document the reason for inclusion of a warranty and identify the specific parts, subassemblies, assemblies, systems or contract line items to which a warranty should apply, and shall address why the warranty is appropriate under the criteria set forth in FAR 46.703. For DOT administration, other than the Coast Guard, the policy and procedures set forth in section 1246.770 of this part for use of warranties in major system acquisitions may be used as a guideline.

(b) Authority for use of warranties in the procurement of major systems by the Coast Guard is stated in section 1246.703 of this part. The policy and procedures on warranties set forth in section 1246.770 of this part are mandatory for Coast Guard. The Coast Guard shall use the procedure set forth in paragraph (a) above for including a warranty in procurements other than major system acquisitions.

1246.705 Limitations.

In addition to limitations set forth in FAR 46.705, the following restrictions are applicable to all DOT contracts:

(a) The Coast Guard is the only DOT administration which is authorized to include warranties in cost-reimbursement contracts for the production of major systems as required by 1246.770 of this part.

(b) Any written warranty on major system acquisitions shall not apply in the case of any system or component thereof which has been furnished by the Government to a contractor except as indicated in section 1246.770-3 of this part.

(c) Any written warranty obtained shall specifically exclude coverage of combat damage.

1246.706 Warranty terms and conditions.

(a) In addition to those items set forth in FAR 46.706, the contracting officer, in developing the warranty terms and conditions, shall consider the following subjects, and where appropriate and cost beneficial shall:

(1) Identify the affected line item(s) and the applicable specification(s);

(2) Require that the line item's design and manufacture will conform to:

(i) An identified revision of a top-level drawing, and/or

(ii) An identified specification or revision thereof;

(3) Require that the system conforms with the specified Government performance requirements;

(4) Require that all systems and components delivered under the contract will be free from defects in materials and workmanship;

(5) State that in the event of failure due to nonconformance with specification and/or defects in material and workmanship, the contractor will bear the cost of all work necessary to achieve the specified performance requirements, including repair and/or replacement of all parts;

(6) Require the timely replacement/repair of warranted items and specify lead times for replacement/repair where possible.

(7) Identify the specific paragraphs containing Government performance requirements which must be met;

(8) Ensure that any performance requirements identified as goals or objectives in excess of specification requirements are excluded from the warranty provision;

(9) Define what constitutes the start of the warranty period (e.g., delivery, acceptance, in-service date), the ending of the warranty (e.g., passing a test or demonstration, or operation without failure for specified time period), and circumstances requiring an extension of warranty duration (e.g., extending the warranty period as a result of mass defect correction during warranty period);

(10) Identify what transportation costs will be paid by the contractor in conjunction with warranty coverage;

(11) Identify any conditions which will not be covered by the warranty, other than the exclusion of combat damage; and

(12) Identify any limitation on the total dollar amount of the contractor's warranty exposure, or agreement to share costs after a certain dollar threshold to avoid unnecessary warranty returns.

(b) In addition, any DOT contract that contains a warranty clause must contain warranty implementation procedures, including warranty notification content and procedures, and identify the individuals responsible for implementation of warranty provisions. The contract may also permit the contractor's participation in investigation of system failures, providing that the contractor be paid at established rates for fault isolation work, and that the Government receive credit for any payments where equipment failure is covered by warranty provisions.

1246.770 Use of warranties in major system acquisitions by Coast Guard.

Subsections 1246.770-1 through 1246.770-3 set forth policy and procedures for the Coast Guard to use in obtaining warranties from prime contractors when contracting for the production of a major system. Other administrations within the Department may use these procedures as guidelines for major system acquisitions.

1246.770-1 Policy.

The Coast Guard shall include written warranties in all contracts with prime contractors for major system acquisitions. When drafting warranty provisions for major system acquisitions, the items listed at 1246.706 should be considered. The warranties shall meet the following requirements (as well as those specified at 1246.771):

(a) For systems or components which are commercially available, such warranty as is normally provided by the manufacturer or supplier shall be obtained in accordance with FAR 46.703(d) and 46.710.

(b) For systems or components provided in accordance with either design or performance requirements as specified in the contract or any modification to that contract, a written warranty of compliance with the stated requirements shall be obtained.

(c) The warranty provided under paragraph (b) of this section, shall provide that in the event the major system or any component thereof fails to meet the terms of the warranty provided, the contracting officer may:

(1) Require the contractor to promptly take such corrective action as the contracting officer determines to be necessary at no additional cost to the United States, including repairing or replacing all parts necessary to achieve the requirements set forth in the contract,

(2) Require the contractor to pay costs reasonably incurred by the United States in taking necessary corrective action, or

(3) Equitably reduce the contract price.

(d) Any written warranty shall specifically exclude coverage of combat damage.

1246.770-2 Tailoring warranty terms and conditions.

As the objectives and circumstances vary considerably among major system acquisition programs, contracting officers shall appropriately tailor the required warranties on a case-by-case basis, including remedies, exclusions, limitations and duration; provided such are consistent with the specific requirements of this section (see FAR 46.706). Contracting officers for major system acquisitions may exclude from the terms of the warranty certain defects for specified supplies (exclusions) and may limit the contractor's liability under the terms of the warranty (limitations), as appropriate, if necessary to derive a cost-effective warranty in light of the technical risk, contractor financial risk, or other program uncertainties. Contracting officers are encouraged to structure broader and more comprehensive warranties where such are advantageous. Likewise, the contracting officer may narrow the scope of a warranty when appropriate (e.g., where it would be inequitable to require a warranty of all performance requirements because a contractor had not designed the system). It is the Department's policy not to include in warranty clauses any terms that require contractor liability for loss, damage or injury to third parties.

1246.770-3 Warranties on government-furnished property.

A prime contractor for a major system acquisition shall not be required to provide the warranties specified in section 1246.770-2 of this part on any property furnished to that contractor by the United States except for defects in installation, and installation or modification in such a manner that invalidates a warranty provided by the manufacturer of the property.

1246.771 Cost benefit analysis.

It is the Department's policy to obtain warranties for a major system acquisition only when they are cost beneficial in accordance with 1246.703(c). If a specific warranty is considered not to be cost beneficial by the contracting officer, a waiver request shall be initiated under section 1246.772 of this part.

1246.772 Waiver and notification procedures.

The Secretary of Transportation may waive the requirement for a written warranty for Coast Guard major acquisition systems when such waiver is in the interest of national defense or if the warranty obtained would not be cost beneficial. Waivers may be granted provided that the Committees on Appropriations of the Senate and the House of Representatives are notified in writing of the Secretary's intention to waive the warranty requirement and the reasons supporting such a determination prior to granting the waiver. The written request for Secretarial waiver of the warranty requirement shall include, at a minimum:

(a) A brief description of the major system and its stage of production, e.g., the number of units delivered and anticipated to be delivered during the life of the program;

(b) The specific waiver requested, the duration of the waiver if it is to involve more than one contract, and the rationale for the waiver; and

(c) All documentation supporting the request for waiver, such as a cost-benefit analysis.

All waivers shall be forwarded via the Office of Acquisition and Grants Management for submission to the Secretary. The Coast Guard shall maintain a written record of each waiver granted and the Congressional notification and report made, together with supporting documentation, for use in answering inquiries.

PART 1249—TERMINATION OF CONTRACTS

AUTHORITY: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1249.1—General Principles

1249.111 Review of proposed settlements.

All proposed settlement agreements shall be coordinated with legal counsel.

[52 FR 44557, Nov. 19, 1987]

PART 1250—EXTRAORDINARY CONTRACTUAL ACTIONS

Subpart 1250.2—Delegation of and Limitations on Exercise of Authority

Sec.

1250.202 Contract adjustment boards.

Subpart 1250.4—Residual Powers

1250.401 Standards for use.

AUTHORITY: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 468(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1250.2—Delegation of and Limitations on Exercise of Authority

1250.202 Contract adjustment boards.

DOT Order 1100.60, Department of Transportation Organizational Manual establishes the Contract Appeals Board as the approving authority to consider and dispose of requests for extraordinary contractual adjustments for DOT contractors.

[52 FR 44557, Nov. 19, 1987]

Subpart 1250.4—Residual Powers

1250.401 Standards for use.

It is DOT policy not to use the "residual powers" authorized by the Act and FAR Subpart 50.4. Conctracting officers shall not include in DOT contracts the clause at FAR 52.250-1, Indemnification Under Pub. L. 85-804, unless specifically authorized by the Secretary or designee.

[52 FR 44557, Nov. 19, 1987]

SUBCHAPTER H—CLAUSES AND FORMS

PART 1252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.
1252.000 Scope of part.

Subpart 1252.1—Instructions for Using Provisions and Clauses

1252.101 Using FAR Part 52.
1252.102 Incorporating provisions and clauses.
1252.102-2 Incorporation in full text.
1252.104 Procedures for modifying and completing provisions and clauses.

Subpart 1252.2—Texts of Provisions and Clauses

1252.207-70 Implementation of Right of First Refusal of Employment.
1252.207-71 Financial and technical ability.
1252.209-71 Disclosure of conflicts of interest.
1252.210-70 Brand name or equal.
1252.212-70 [Reserved]
1252.212-71 Notice of delay.
1252.215-70 [Reserved]
1252.215-71 Key personnel and facilities.
1252.215-72 Cost proposal instructions.
1252.216-70 [Reserved]
1252.216-71 Evaluation of proposals subject to economic price adjustment.
1252.216-72 Estimated cost, base fee, and award fee.
1252.216-73 Payment of base and award fee.
1252.216-74 Determination of award fee earned.
1252.216-75 Performance evaluation plan.
1252.216-76 Distribution of award fee.
1252.217-70 Index for specifications.
1252.217-71 Delivery and shifting of vessel.
1252.217-72 Performance.
1252.217-73 Inspection and manner of doing work.
1252.217-74 Subcontracts.
1252.217-75 Lay days.
1252.217-76 Liability and insurance.
1252.217-77 Title.
1252.217-78 Discharge of liens.
1252.217-79 Delays.
1252.217-80 Department of Labor safety and health regulations for ship repairing.
1252.217-81 Guarantee.
1252.222-70 Service Contract Act of 1965 as amended, Contracts of $2,500 or less.
1252.222-71 Strikes or picketing affecting timely completion of the contract work.
1252.222-72 Strikes or picketing affecting access to FAA facility.
Sec.
1252.222-73—1252.222-74 [Reserved]
1252.222-75 Service Contract Act of 1965 as amended.
1252.222-76 [Reserved]
1252.222-77 Fair Labor Standards Act and Service Contract Act—Price adjustment (multiyear and option contracts).
1252.222-78 Fair Labor Standards Act and Service Contract Act—price adjustment.
1252.222-79 Service Contract Act requirements as to vacation pay.
1252.223-70 [Reserved]
1252.223-71 Accident and fire reporting.
1252.223-72 Protection of human subjects.
1252.228-70 [Reserved]
1252.228-71 Loss of or damage to leased aircraft.
1252.228-72 Fair market value of aircraft.
1252.228-73 Risk and indemnities.
1252.235-70 [Reserved]
1252.235-71 Recoupment of development costs.
1252.236-70 [Reserved]
1252.236-71 Special precautions for work at operating airports.
1252.237-70 [Reserved]
1252.237-71 Qualifications of employees.
1252.242-70 Dissemination of information—educational institutions.
1252.242-71 Contractor testimony.
1252.242-72 Dissemination of contract information.
1252.245-70 Government property reports.

AUTHORITY: Sec. 205(c) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

SOURCE: 52 FR 44557, Nov. 19, 1987, unless otherwise noted.

1252.000 Scope of part.

This part, in conjunction with FAR Part 52, contains the DOT provisions and clauses whose use is prescribed elsewhere in this regulation.

Subpart 1252.1—Instructions for Using Provisions and Clauses

1252.101 Using FAR Part 52.

Administrations which prescribe or develop provisions or clauses under the authority of FAR 52.101(b)(2)(i)(B) or (C) shall ensure that the requirements of FAR Subpart 1.4 and Subpart 1201.4 are met.

1252.102 Incorporating provisions and clauses.

1252.102-2 Incorporation in full text.

All provisions and clauses prescribed or developed by administrations shall be incorporated in solicitations and/or contracts in full text as required by FAR 52.102-2(a)(4).

1252.104 Procedures for modifying and completing provisions and clauses.

TAR provisions and clauses shall not be modified (see FAR 52.101(a)) unless authorized by this regulation, and when so authorized, contracting officers must comply with the procedures in FAR 52.104.

Subpart 1252.2—Texts of Provisions and Clauses

1252.207-70 Implementation of Right of First Refusal of Employment.

As prescribed in 1207.305, and for any contract when contractor performance causes Federal employees in the Government commercial activity to be adversely affected, insert the following clause in solicitations and contracts:

IMPLEMENTATION OF RIGHT OF FIRST REFUSAL OF EMPLOYMENT (AUG 1988)

(a) *Policy.* The contractor shall give, and shall require each subcontractor to give, adversely affected Federal employees the right of first refusal for all employment openings under this contract for which they are qualified. The contractor shall require the substance of this clause to be included in each subcontract at every tier under this contract, other than subcontracts for raw materials, commercial stock items and subcontracts that do not exceed $25,000.

(b) *Definitions:* (1) An "adversely affected Federal employee" is any Federal employee who is assigned to the Government commercial activity, who is a competing employee under Office of Personnel Management reduction-in-force regulations, and who is, as a result of the award of this contract, released from his or her competitive level, causing separation, reassignment, or downgrade.

(2) The term "contractor" as used in this clause shall include the contractor and each subcontractor at every tier. The term "subcontractor" as used in this clause shall include any person or firm which has a legal obligation to perform all or part of the work under a subcontract at any tier under this contract, other than a subcontract primarily for the supply of raw materials or commercial stock items or a subcontract that does not exceed $25,000.

(3) The "contract award date" is the date the contract is signed by the contracting officer.

(4) "Employment opening" is a position vacancy in the contractor's organization, created by the award of this contract or any subcontract under this contract, which the contractor is unable to fill with personnel on the contractor's active payroll, as of the contract award date, including any position within the local commuting area of the commercial activity which arises in the contractor's organization as a result of the contractor's reassignment of an employee due to the award of this contract or of any subcontract under this contract.

(5) "Working day" means a day other than a Saturday, a Sunday or a day on which either the Government's or the Contractor's office administering this contract is officially closed for business.

(c) *Filling employment openings.* (1) For a period beginning with the contract award date and ending [*the contracting officer shall fill in this blank with a number between 90 and 180*] days after all adversely affected Federal employees have been separated, reassigned, or downgraded as a result of the award of this contract, no person other than an adversely affected Federal employee, shall be offered a job filling an employment opening until each qualified, adversely affected Federal employee identified in the most current list provided to the contractor under paragraph (e) of this clause has been offered the job and either has refused it or has waived their right of first refusal.

(2) For a period beginning with the contract award date and ending [*the contracting officer shall fill in this blank with a number between 90 and 180*] days after all adversely affected Federal employees have been separated, reassigned or downgraded as the result of the award of this contract, the contractor shall, in filling employment openings, communicate written offers of employment to adversely affected Federal employees identified in the most current list provided to the contractor under paragraph (e) of this clause. Such offers shall specify at a minimum the following:

(i) Title, description, and location of employment opening being offered;

(ii) Pay and benefits (i.e., paid leave, holidays, health and life insurance, retirement and any other benefits such as stock options that would contribute to the total monetary value of the position);

(iii) Hours of work and leave schedule; and

(iv) Final date employee may accept job offer.

(3) At a minimum, adversely affected Federal employees shall be given five working days, excluding mail time, after receipt of a job offer to accept or reject the offer. At the contractor's request, the contracting officer, after consulting with the agency personnel office, shall determine whether any adversely affected employee has waived his or her right of first refusal by not responding to a job offer in a timely manner.

(4) If there are no qualified, available, adversely affected Federal employees on the most current list provided by the contracting officer or designee, the contractor may select for an employment opening any person not disqualified by any provision of this contract.

(d) *Contractor reporting requirements.* (1) No later than five (5) working days after the contract award date, the contractor shall provide the contracting officer or designee with the following:

(i) A list of employment openings along with a brief description of duties and qualification requirements for each position; and

(ii) Sufficient job application forms for adversely affected Federal employees.

(2) For the period beginning with the contract award date and ending [*the contracting officer shall fill in this blank with a number between 90 and 180*] days after all adversely affected Federal employees have been separated, reassigned or downgraded as the result of the award of this contract, the contractor shall inform the contracting officer or designee by telephone within one (1) working day after an employment offer is made to an adversely affected Federal employee. The contractor shall also notify the contracting officer or designee by certified mail no later than five (5) working days after each adversely affected Federal employee's acceptance or refusal of the employment offer. This notice shall contain the following information:

(i) The name and social security number of the adversely affected Federal employee offered an employment opening;

(ii) The date the offer was made;

(iii) The salary and benefits contained in the offer (benefits as defined in paragraph (c)(2)(ii) of this clause);

(iv) A brief description of the position;

(v) Either the date of acceptance of the offer and the effective date of employment or the date of refusal of the offer; and

(vi) If not previously provided to the contracting officer or designee, the names and social security numbers of any adversely affected Federal employees who applied for, but were not offered, employment in the position, and the reason(s) for not making an offer to each of them.

(3) The contractor shall promptly inform the contracting officer or designee of the name and social security number of each adversely affected Federal employee hired by the contractor and any subcontractor during the [*the contracting officer shall fill in this blank with a number between 90 and 180*]-day period beginning with the day after the date of the separation from Federal employment of the last of the adversely affected Federal employees, and shall also inform the contracting officer or designee of the date or dates of such hiring or hirings.

(4) Upon receipt of the most current list of adversely affected Government employees from the contracting officer or designee pursuant to paragraph (e) of this clause, the contractor promptly shall provide, or cause to be provided, a copy of the list to each subcontractor under this contract.

(e) *Information provided to the contractor.* (1) On the contract award date or thereafter, but no later than ten (10) working days after the date of issuance of the initial reduction-in-force notices to adversely affected Federal employees, the contracting officer or designee shall provide the contractor with a current list of those adversely affected Federal employees who wish to exercise their right of first refusal.

(2) From time-to-time after issuance of the initial list pursuant to paragraph (e)(1) of this clause, and until the last of the adversely affected Federal employees have been separated from Federal employment, the contracting officer or designee shall provide the contractor with an updated version of the current list of adversely affected Federal employees, reflecting those employees who have been recently released from their competitive level and reassigned, downgraded or separated and those who have indicated their unavailability for employment with the contractor.

(3) On the contract award date or as soon thereafter as feasible, the contracting officer or designee shall inform the contractor of the date on which all adversely affected Federal employees will be separated, reassigned or downgraded as a result of the award of this contract.

(f) *Record of compliance.* Upon request of the contracting officer or designee, the contractor shall make available for examination by the Government, all pertinent books, documents, papers and records required to determine compliance with this clause.

(g) *Qualifications determination.* An adversely affected Federal employee who held a job in the Government commercial activity, that directly corresponds to or is not significantly different from an employment opening under this contract or a subcontract under this contract, shall be considered qualified to fill that employment opening, unless the contractor adequately documents the employee's lack of qualifications.

(h) *Relation to other statutes, regulations and employment policies.* (1) The provisions of this clause do not modify or alter any of the contractor's responsibilities and obligations under statutes, regulations or other contract clauses concerning non-discrimination, hiring and employment based on veteran's status, race, color, religion, sex, age, handicap or national origin.

(2) The contractor shall be aware of the post-employment restrictions prohibiting certain types of representations before, or communications to, the Federal Government by former employees (18 U.S.C. 207).

(i) *Penalty for noncompliance.* Failure of the Contractor to comply with any provision of this clause may be grounds for termination of the contract for default.

(End of clause)

Alternate I (April 1988)

As prescribed in 1207.305, the following paragraph b(4) may be substituted for paragraph b(4) of the clause:

(4) "Employment opening is a position vacancy in the contractor's organization, created by the award of this contract or any subcontract under this contract, which the contractor is unable to fill with personnel on the contractor's active payroll, as of the date of submission of initial bids or proposals, including any position within the local commuting area of the commerical activity which arises in the contractor's organization as a result of the contractor's reassignment of an employee due to the award of this contract or of any subcontract under this contract.

[53 FR 28401, July 28, 1988, as amended at 53 FR 31007, Aug. 17, 1988]

1252.207-71 Financial and technical ability.

As prescribed in 1207.305, insert the following provision in A-76 solicitations:

FINANCIAL AND TECHNICAL ABILITY (NOV 1987)

a. If a bid submitted in response to this solicitation is favorably considered, a two-part preaward survey may be conducted to determine the bidder's ability to perform. Part one will be conducted by (*Insert name of office*), who may contact you to determine your financial capability to perform. Current financial statements and pertinent data should be available at that time. Part two of the survey will be conducted at (*Name Location*) shortly after bid opening by government personnel.

b. If a preaward survey is conducted, you will be requested to have management officials, of the appropriate level, represent your firm. In addition, your proposed project manager should be available to respond to questions raised during the preaward survey. You should also be prepared to present a briefing regarding the manner in which you intend to accomplish your contractual obligations. As a minimum, you should address the following items of information in your presentation (a written copy of the presentation with the backup data below must be submitted to the contracting officer 5 work days before the presentation):

(1) Startup and phase-in schedule.

(2) Key personnel letters of intent and resumés.

(3) Availability of labor force, plan for recruiting, type and extent of training.

(4) The role of the project manager and the extent of his/her authority.

(5) Organizational and functional charts reflecting line of management responsibility.

(6) Manning charts in a format requested by the contracting officer (only to be used to ensure that you understand the workload).

(7) Plans and management procedures for logistical administrative support of all functions; that is, contractor furnished supplies and equipment and procedures for timely payment of personnel.

(8) Procedures to be used to ensure contract requirements are met (quality control program).

(9) Corporate experience, as evidenced by past and present contracts.

(10) Other purchases for which you have bid and for which you are apparent low bidder.

(End of clause)

1252.209-71 Disclosure of conflicts of interest.

As prescribed in 1209.508-1 and 1215.407 insert the following provision in solicitations for negotiated acquisitions:

DISCLOSURE OF CONFLICTS OF INTEREST (APR 1984)

It is the Department of Transportation's (DOT's) policy not to award contracts to offerors whose objectivity may be impaired because of any related past, present, or planned interest, financial or otherwise, in organizations regulated by DOT or in organizations whose interests may be substantially affected by Departmental activities. Based on this policy:

(a) The offeror shall provide a statement in its technical proposal which describes in a concise manner all past, present or planned organizational, financial, contractual or other interest(s) with an organization regulated by DOT, or with an organization whose interests may be substantially affected by Departmental activities, and which is related to the work under the request. The interest(s) described shall include those of the proposer, its affiliates, proposed consultants, proposed subcontractors and key personnel of any of the above. Past interest shall be limited to within one year of the date of the offeror's technical proposal. Affected organizations shall include, but are not limited to, the insurance industry. Key personnel shall include any person owning more than 20% interest in the offeror, and the offeror's corporate officers, its senior managers and any employee who is responsible for making a decision or taking an action on this contract where the decision or action can have an economic or other impact on the interests of a regulated or affected organization.

(b) The offeror shall describe in detail why it believes, in light of the interest(s) identified in (a) of this section, that performance of the proposed contract can be accomplished in an impartial and objective manner.

(c) In the absence of any relevant interest identified in paragraph (a) of this provision, the offeror shall submit in its technical proposal a statement certifying that to its best knowledge and belief no affiliation exists relevant to possible conflicts of interest. The offeror must obtain the same information from potential subcontractors prior to award of a subcontract.

(d) The Contracting Officer will review the statement submitted and may require additional relevant information from the offeror. All such information, and any other relevant information known to DOT will be used to determine whether an award to the offeror may create a conflict of interest. If such conflict of interest is found to exist, the Contracting Officer may (1) disqualify the offeror, or (2) determine that it is otherwise in the best interest of the United States to contract with the offeror and include appropriate provisions to mitigate or avoid such conflict in the contract awarded.

(e) The refusal to provide the disclosure or representation, or any additional information required, may result in disqualification of the offeror for award. If nondisclosure or misrepresentation is discovered after award, the resulting contract may be terminated. If after award the Contractor discovers a conflict of interest with respect to this contract which could not reasonably have been known prior to award, an immediate and full disclosure shall be made in writing to the Contracting Officer which shall include a description of the action the contractor has taken or proposes to take to avoid or mitigate such conflict. The DOT Contracting Officer may, however, terminate the contract for convenience if it deems that termination is in the best interest of the Government.

(End of provision)

1252.210-70 Brand name or equal.

As prescribed in 1210.011-70 insert the following provision when a "brand name or equal" purchase description is used in the solicitation:

BRAND NAME OR EQUAL (JAN 1985)

(As used in this provision, the term "brand name" includes identification of products by make and model.)

(a) If items called for by this solicitation have been identified in the schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is intended to indicate the quality and characteristics of products that will be satisfactory. Offers offering "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the offers and are determined by the Government to meet fully the salient characteristics requirements listed in the solicitation.

(b) Unless the offeror clearly indicates in its offer that it is offering an "equal" product, its offer shall be considered as offering the brand name product referenced in the solicitation.

(c)(1) If the offeror proposed to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the invitation for bids, or such product shall be otherwise clearly identified in the offer. The evaluation of offers and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the offeror or identified in its offer as well as other information reasonably available to the contracting office. CAUTION TO OFFERORS: The contracting office is not responsible for locating or securing any information which is not identified in the offer and reasonably available to the contracting office. Accordingly, to insure that sufficient information is available, the offeror must furnish as a part of its offer all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting office to: (i) Determine whether the product offered meets the salient characteristics requirement of the solicitation, and (ii) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to acquire by making an award. The information furnished may include specific reference to information previously furnished or to information otherwise available to the contracting office.

(2) If the offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, it shall: (i) Include in its offer a clear description of such proposed modifications, and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after sealed bid opening to make a product conform to a brand name product reference in the solicitation will not be considered.

(End of provision)

1252.212-70 [Reserved]

1252.212-71 Notice of delay.

As prescribed at 1212.7001, insert the following clause in all contracts:

NOTICE OF DELAY (APR 1984)

If the Contractor becomes unable to complete the contract work at the time(s) specified because of technical difficulties, notwithstanding the exercise of good faith and diligent efforts in the performance of the work called for hereunder, the Contractor shall give the Contracting Officer written notice of the anticipated delay and the reasons therefor. Such notice and reasons shall be delivered promptly after the condition creating the anticipated delay becomes known to the Contractor but in no event less than forty-five (45) days before the completion date specified in this contract, unless otherwise directed by the Contracting Officer. When notice is so required, the Contracting Officer may extend the time specified in the Schedule for such period as deemed advisable.

(End of clause)

1252.215-70 [Reserved]

1252.215-71 Key personnel and facilities.

As prescribed in 1215.106-70 insert the following clause in appropriate contracts:

KEY PERSONNEL AND FACILITIES (APR 1985)

The personnel and/or facilities as specified in the Schedule of this contract are considered essential to the work being performed hereunder. Prior to removing, replacing, or diverting any of the specified individuals or facilities, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract. No diversion shall be made by the Contractor without the written consent of the Contracting Officer; provided, that the Contracting Officer may ratify in writing the change and such ratification shall constitute the consent of the Contracting Officer required by this clause. The personnel and/or facilities as specified in the Schedule of this contract may, with the consent of the contracting parties, be amended from time to time during the course of the contract to either add or delete personnel and/or facilities, as appropriate.

(End of clause)

1252.215-72 Cost proposal instructions.

As prescribed in 1215.407(b) a provision substantially as follows may be inserted in RFPs when cost or pricing data are to be obtained:

COST PROPOSAL INSTRUCTIONS (AUG 1988)

Offerors are instructed to prepare their cost proposals in sufficient detail to permit thorough and complete evaluation by the Government. Where proposed rates are not based upon catalog or list prices, the basis for the proposed rates shall be identified.

The cost proposal shall be submitted on Standard Form 1411, Contract Pricing Proposal Cover Sheet, prepared in accordance with the instructions in FAR 15.804-6. Summary data shall be placed on SF 1411 and the line item summaries (by element of cost) described in paragraph 7.A of FAR Table 15-3. The following format shall be followed in preparing the supporting attachments referenced in column (4) of the line item summaries. Clearly identify all subcontracted items and include the name and address of the proposed subcontractor. Written quotation for all subcontracted services must be included with the cost proposal.

1. Direct material

a. Purchased Parts: Provide a consolidated price summary of individual material quantities for the proposed contract. Give details on an attached schedule.

b. Subcontracted Items: Show the total cost of subcontract effort in line b. below and provide supporting data for each subcontractor.

c. Other: (1) Raw Material: Show total cost on line c. (1) below and give details on an attached schedule.

(2) Standard Commercial Items: Show total cost on line c. (2) below and give details on an attached schedule.

Direct Material	Estimated cost (dollars)	Reference
1.		
a. Purchased parts		
b. Subcontracted items		
c. Others		
(1) Raw material		
(2) Your standard commercial items		
Total direct material		

2. Material overhead

Show cost here only if your accounting system provides for such cost segregation and only if this cost is not computed as part of labor overhead or G&A.

Material Overhead Rate____% × $ ____ base= ____ Reference ____

3. Direct labor

Show the hourly rate and the total hours for each category of direct labor proposed. Indicate whether actual rates or projected rates are used.

Direct labor	Estimated hours	Rate/hour	Estimated cost (dollars)	Reference
Total direct labor				

4. Labor overhead

Use the overhead rate(s) and base(s) approved by a Government audit agency for use in proposals. If no such approval has been given, or if the approval is more than 12 months old, furnish data supporting the proposed rates. The data shall include a breakdown of the items comprising overhead and the base(s) upon which the burden(s) is (are) computed.

Labor overhead	Overhead rate	Times base equals	Estimated cost (dollars)	Reference
Total labor overhead				

5. Equipment

Identify specific equipment and unit prices or usage rates as shown below. Equipment rates may be proposed on any basis (i.e., hourly, daily, weekly, monthly).

Description	Estimated Usage	Rates (dollars)	Estimated Cost (dollars)
Total equipment cost			

6. Travel

Identify each trip proposed and the persons (or labor categories) designated to make each trip. Identify transportation and per diem rates.

(a) Transportation:

Number of persons	Location		Mileage or fare	Cost per trip	Estimated cost (dollars)
	From	To			
Transportation subtotal					

(b) Subsistence:

Number of persons	Days	Per diem	Estimated cost (dollars)	Reference

(c) Miscellaneous Travel Expenses (incl. car rental, taxis, airport limos., etc):

Types of expense	Estimated cost (dollars)
Miscellaneous subtotal:	
Total travel and per diem	

7. Individual consultant service.

Identify the contemplated consultant(s). State the amount of service estimated to be required and the consultant's quoted daily or hourly rate.

Name	Estimated hours/days	Rate	Estimated cost (dollars)
Total consultant			

8. Other direct costs.

List all other direct charge costs not otherwise included in the categories described above (e.g., services of specialized trades, computer services, preservation, packaging and packing, leasing of equipment) and provide bases for pricing.

Item description	Estimated quantity	Unit amount	Estimated cost (dollars)	Reference
Total other direct costs				

9. General and administrative expenses.

Use the G&A rate and base approved by a Government audit agency for use in proposals. If no such approval has been given, or if the approval is more than 12 months old, furnish data supporting the proposed rates. The data shall include a breakdown of the items comprising G&Á and the base(s) upon which the burden(s) is (are) computed.

G&A Rate ______% of Cost Element Nos. ____Reference ______

10. Royalties $ __________

11. Contract facilities capital cost of money $__________

12. Profit or fee $__________

[53 FR 44557, Nov. 19, 1987, as amended at 28402, July 28, 1988; 53 FR 31007, Aug. 17, 1988]

1252.216-70 [Reserved]

1252.216-71 Evaluation of proposals subject to economic price adjustment.

As prescribed in 1216.203-471 insert the following provision in all solicitations that contain an economic price adjustment clause:

EVALUATION OF PROPOSALS SUBJECT TO ECONOMIC PRICE ADJUSTMENT (APR 1984)

Notwithstanding the requirements of the clause entitled "(insert the title of the clause for economic price adjustment)", proposals shall be evaluated on the basis of quoted prices without an amount for economic price adjustment being added. Proposals which provide for a ceiling lower than that stipulated, if a ceiling is stipulated in the clause, will also be evaluated on this basis, but any resultant award will be made at the lower ceiling. Proposals which provide for adjustment that may exceed the maximum adjustment stipulated, if a maximum is stipulated in the clause, or which limit or delete the downward adjustment, if a downward adjustment is stipulated in the clause, shall be rejected as nonresponsive.

(End of provision)

1252.216-72 Estimated cost, base fee, and award fee.

As prescribed in 1216.404-270(b), insert the following clause in solicitations and contracts when a cost plus award fee contract is contemplated:

ESTIMATED COST, BASE FEE, AND AWARD FEE (APR 1984)

The estimated cost of this contract is $(insert amount). A base fee of $(insert amount) and a maximum Award Fee of $(insert amount) are payable in accordance with 1252.216-73 "Payment of Base and Award Fee."

(End of clause)

1252.216-73 Payment of base and award fee.

As prescribed in 1216.404-270(b), insert the following clause in solicitiations and contracts when a cost plus award fee contract is contemplated:

PAYMENT OF BASE AND AWARD FEE (APR 1985)

(a) The Government will make payment of the base fee in (insert number) increments. The amount payable shall be based on the progress as determined by the Contracting Officer and shall be subject to any withholdings as may be provided for elsewhere in this contract.

(b) The Government will promptly make payment of any Award Fee upon the submission by the Contractor to the Contracting Officer, or his authorized representative, of a public voucher or invoice in the amount of the total fee earned for the period evaluated as specified in the clause 1252.216-74 "Determination of Award Fee Earned". Payment shall be made without the need for a contract modification.

(End of clause)

1252.216-74 Determination of award fee earned.

As prescribed in 1216.404-270(b), insert the following clause in solicitations and contracts when a cost plus award fee contract is contemplated.

Determination of Award Fee Earned (Apr 1985)

(a) The Government shall, at the conclusion of each specified evaluation period(s), evaluate the Contractor's performance for a determination of award fee earned. The Contractor agrees that the determination as to the amount of award fee earned will be made by the Government Fee Determination Official (FDO) and such determination concerning the amount of award fee earned is binding on both parties and shall not be subject to appeal under the "Disputes" clause or to any board or court.

(b) It is agreed that the evaluation of Contractor performance shall be in accordance with the Performance Evaluation Plan referenced in the clause entitled "Performance Evaluation Plan" and that the contractor shall be promptly advised in writing of the determiniation and the reasons why it was or was not earned. It is further agreed that the Contractor may submit a self-evaluation of performance of each period under consideration. While it is recognized that the basis for determination of the fee shall be the evaluation by the Government, any self-evaluation which is received within (insert number) days after the end of the period being evaluated may be given such consideration, if any, as the FDO shall find appropriate.

(c) The FDO may, in his/her discretion, specify in any fee determination that fee not earned during the period evaluated may be accumulated and be available for allocation to one or more subsequent periods. In that event, the clause 1252.216-76 "Distribution of Award Fee" shall be adjusted to reflect such allocations.

(End of clause)

1252.216-75 Performance evaluation plan.

As prescribed in 1216.404-270(b), insert the following clause in solicitations and contracts when a cost plus award fee contract is contemplated:

Performance Evaluation Plan (Apr 1984)

(a) A Contractor Performance Evaluation Plan, upon which the determination of award fee shall be based (including the criteria to be considered under each area evaluated and the percentage of award fee, if any, available for each area), will be unilaterally established by the Government. A copy of the plan shall be provided to the Contractor (insert number) calendar days prior to the start of the first evaluation period.

(b) The Performance Evaluation Plan shall set forth the criteria upon which the Contractor will be evaluated for perfomance relating to any: (1) Technical (including Schedule) requirements if appropirate; (2) Management; and (3) Cost Functions selected for evaluation.

(c) The Performance Evaluation Plan may, consistent with the contract, be revised unilaterally by the Government at any time during the period of performance. Notification of such changes shall be provided to the Contractor (insert number) calendar days prior to the start of the evaluation period to which the change will apply.

(End of clause)

1252.216-76 Distribution of award fee.

As prescribed in 1216.404-270(b), insert the following clause in solicitations and contracts when a cost plus award fee contract is contemplated:

Distribution of Award Fee (Apr 1984)

(a) The total amount of award fee available under this contract is assigned to the following evaluation periods in the following amounts:

Evaluation Period

Available Award Fee

(b) Payment of the base fee and award fee shall be made, provided that after payment of 85 percent of the base fee and potential award fee, the Government may withhold further payment of the base fee and award fee until a reserve is set aside in an amount that the Government considers necessary to protect its interest. This reserve shall not exceed 15 percent of the total base fee and potential award fee or $100,000, whichever is less.

(c) In the event of contract termination, either in whole or in part, the amount of award fee available shall represent a prorata distribution associated with evaluation period activities or events as determined by the Fee Determination Official.

(End of clause)

1252.217-70 Index for specifications.

As prescribed at 1217.7001(c), insert the following clause in solicitations and contracts:

INDEX FOR SPECIFICATIONS (JAN 1985)

If an index or table of contents is furnished in connection with specifications, it is understood that such index or table of contents is for convenience only. Its accuracy and completeness is not guaranteed, and it is not to be considered as part of the specification. In case of discrepancy between the index or table of contents and the specifications, the specifications shall govern.

(End of clause)

1252.217-71 Delivery and shifting of vessel.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

DELIVERY AND SHIFTING OF VESSEL (JAN 1985)

The Government shall deliver the vessel to the Contractor at his place of business. Upon completion of the work the Government shall accept delivery of the vessel at the Contractor's place of business. The Contractor shall provide, at no additional charge, upon 24 hours' advance notice, a tug or tugs and docking pilot, acceptable to the contracting officer, to assist in handling the vessel between (to and from) the Contractor's plant and the nearest point in a waterway regularly navigated by vessels of equal or greater draft and length. While the vessel is in the hands of the Contractor, any necessary towage, cartage, or other transportation between ship and shop or elsewhere, which may be incident to the work herein specified, shall be furnished by the Contractor without additional charge to the Government.

(End of clause)

1252.217-72 Performance.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

PERFORMANCE (JAN 1985)

(a) The Contractor shall make the necessary arrangements for receiving the vessel on the specified date, such arrangements to be satisfactory to the contracting officer or his duly authorized representative.

(b) The Contractor shall promptly commence the work required by the contract and shall diligently prosecute same to completion to the satisfaction of the contracting officer.

(c) Except as otherwise provided in this contract, the Contractor shall furnish all necessary material, labor, services, equipment, supplies, power, accessories, facilities and such other things and services as are necessary for accomplishing the work specified in this contract subject to the right reserved in the Government under the "Government-furnished Property" clause of the contract.

(d) The Contractor shall without charge and without specific requirement therefor:

(1) Make available at the plant to personnel of the vessel, while in drydock or on a marine railway, toilet and similar facilities acceptable to the contracting officer as adequate in number and sanitary standards. For vessels fitted with pollution abatement systems, provide for disposal of shipboard waste (non-oily) by installing a portable hose between the vessel's weather deck sewage overboard discharge connection and either a shore-side holding facility, sewage treatment plant, or a municipal sewage system. Directing of shipboard waste to waters covered by the Federal Water Pollution Control Act, as amended, will not be allowed. In freezing conditions the Contractor will provide protection to the hook up system.

(2) Supply and maintain, in such condition as the contracting officer may reasonably require, suitable brows and gangways from the pier, drydock or marine railway to the vessel (access to vessel shall be lighted by the Contractor during the periods of darkness).

(3) Treat salvage, scrap, or other ship's material of the Government resulting from performance of work as though they were items of Government-furnished property in accordance with provisions of the "Government-Furnished Property" clause of this contract.

(4) Perform, or pay the cost of, any repairs, reconditioning or replacements necessary as a result of the use by the Contractor of any of the vessel's machinery, equipment or fittings including, but not limited to winches, pumps, rigging, or pipelines.

(e) The Contractor shall conduct dock and sea trials of the vessel as required by the specifications. Unless otherwise expressly provided in the contract, during the conduct of such trials the vessel shall be under the control of the vessel's commander and crew with representatives of the Contractor and the Government on board to determine whether or not the work done by the Contractor has been satisfactorily performed. Dock and sea trials not specified herein which the Contractor requires for his own benefit shall not be undertaken by the Contractor without prior notice to and approval of the contracting officer; any such dock trials shall be conducted at the risk and expense of the Contractor. The Contractor shall provide and install all fittings and appliances which may be necessary for the dock and sea trials, to enable the representatives of the Government to determine whether the requirements of the contract, plans and specifications have been met, and the Contractor shall be responsible for the care, installation and removal of instruments and apparatus furnished by the Government for such trials.

(End of clause)

1252.217-73 Inspection and manner of doing work.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

INSPECTION AND MANNER OF DOING WORK (JAN 1985)

(a) All work and material shall be subject to the approval of the contracting officer or his/her duly authorized representative. Work shall be performed in accordance with the plans and specifications of this contract as modified by any change order issued under the "Changes" clause in this contract.

(b) Unless otherwise specifically provided for herein, all operational practices of the Contractor and all workmanship and material, equipment and articles used in the performance of work thereunder shall be in accordance with Amerian Bureau of Shipping Rules for Building and Classing Steel Vessels, U.S. Coast Guard Marine Engineering Regulations and Material Specifications (Subchapter J, 46 CFR), U.S. Coast Guard Electrical Engineering Regulations (Subchapter J, 46 CFR), U.S. Coast Guard Navigation and Vessel Inspection Circular No. 4-60 (Part IV—Notes on Repair), and U.S.P.H.S. Handbook on Sanitation in Vessel Construction, in effect at the time of the Contractor's submission of bid (or execution of the contract, if negotiated), and the best commercial maritime practices, except when Navy specifications are specified, in which case such standards of material and workmanship shall be followed. Where the detailed specifications do not require a Navy standard, or the requirements are not clearly or specifically covered by one of the aforementioned standards, the contracting officer or their designated representative shall prescribe a Navy or industrial standard for the work wherever applicable, and the decision shall be final:

Provided, however, That where the requirements of the representative for development of detailed drawings, selection of materials and equipment, standards of workmanship, which are not specifically required in the specifications result in a change in unit price, total contract price, quantity, or delivery schedule, the contracting officer will be advised accordingly and the Contractor will not proceed with the work until specifically directed to do so by the contracting officer.

(c) All material and workmanship shall be subject to inspection and test at all times during the Contractor's performance of the work to determine their quality, and suitability for the purpose intended and compliance with the contract. In case any material or workmanship furnished by the Contractor is found to be defective prior to redelivery of the vessel, or not in accordance with the requirements of the contract, the Government, in addition to its rights under any "Guarantee" clause which may be contained in this contract shall have the right prior to redelivery of the vessel to reject such material or workmanship, and to require its correction or replacement by the Contractor at the Contractor's cost and expense. If the Contractor fails to proceed promptly with the replacement or correction of such material or workmanship, as required by the contracting officer, the Government may, by contract or otherwise, replace or correct such material or workmanship and charge to the Contractor the excess cost occasioned the Government thereby. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work specified in the contract. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of the contract and for a period of sixty days after completion of all work required by the contract.

(d) No welding, including welding and brazing, shall be permitted in connection with repairs, completions, alterations, or additions to hulls, machinery, or components of vessels, by a welder or procedure not qualified in accordance with MIL-STD-248C. Procedure qualifications tests shall be conducted in accordance with the requirements of MIL-STD-248C.

(e) The Contractor shall exercise reasonable care to protect the vessel from fire, and the Contractor shall maintain a reasonable system of inspection over the activities of welders, burners, riveters, painters, plumbers and similar workers, particularly where such activities are undertaken in the vicinity of the vessel's magazine, fuel oil tanks or storerooms containing flammable material. A reasonable number of hose lines shall be maintained by the Contractor ready for immediate use on the vessel at all times while the vessel is berthed alongside the Contractor's pier or in drydock or on a marine railway. All tanks under alteration or repair shall be cleaned, washed and steamed out or otherwise made safe by the Contractor if and to the extent necessary, and the contracting officer shall be furnished with "gas-free" or "safe-for-hotwork" certificates before any hotwork is done on a tank. Unless otherwise provided in this contract, the Contractor shall at all times maintain reasonable fire watch about the vessel, including a fire watch on the vessel while work is being performed thereon.

(f) The Contractor shall place proper safeguard and/or effect such safety precautions as necessary, including suitable and sufficient lighting for the prevention of accidents or injury to persons or property during the prosecution of work under this contract and/or from time of receipt of the vessel until acceptance of work performed by the Government.

(g) Except as otherwise provided in this contract, when the vessel is in the custody of the Contractor or in drydock or on a marine railway and the temperature becomes as low as 35 degrees Fahrenheit, the Contractor shall keep all pipelines, fixtures, traps, tanks, and other receptacles on or hooked up to the vessel drained to avoid damage from freezing, or if this is not practical, the vessels shall be kept heated to prevent such damage. It shall be the Contractor's responsibility to insure adequate circulation in the fire main water supply to prevent freezing of the water lines. The vessel's stern tube and propeller hubs shall be protected from frost damage by applied heat through the use of a salamander or other proper means.

(h) The work shall, whenever practicable, be performed in such manner as not to interfere with the berthing and messing of civilian or military personnel attached to the vessel, and provisions shall be made so that personnel assigned shall have access to the vessel at all times, it being understood that such personnel will not interfere with the work or the Contractor's workmen. The Contractor shall provide messing and sanitary facilities for its employees, subcontractors and agents separate from the vessel.

(i) The Government does not guarantee the correctness of the dimensions, sizes and shapes given in any sketches, drawings, plans or specifications prepared or furnished by the Government. The Contractor shall be responsible for the correctness of the shape, sizes and dimensions of parts to be furnished hereunder, other than those furnished by the Government.

(j) The Contractor shall at all times keep the site of the work on the vessel free from accumulation of waste material or rubbish caused by his employees or the work, and at the completion shall remove all rubbish from and about the site of the work and shall leave the work in its immediate vicinity "broom clean" unless more exactly specified in this contract.

(k) Any question regarding or rising out of the interpretations of plans and specifications of this contract or any discrepancies between the plans and specifications shall be determined by the contracting officer or his/her duly authorized representative; Provided, however, that any interpretations or determinations by the authorized representative which affect the price or delivery time specified in this contract must be approved in writing by the contracting officer prior to proceedings with the requirements of such interpretations or determinations.

(l) While in drydock or on a marine railway, the commanding officer of the vessel, if then in commission, shall be responsible for the proper closing of openings to the ship's bottom upon which no work is being done by the Contractor. The Contractor shall be responsible for the closing, before the end of working hours, of all valves and openings upon which work is being done by its workmen when such closing is practicable. The Contractor shall keep the commanding officer cognizant of the closure status of all valves and openings upon which the Contractor's workmen have been working.

(End of clause)

1252.217-74 Subcontracts.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

SUBCONTRACTS (JAN 1985)

(a) Nothing contained in the contract shall be construed as creating any contractual relationship between any subcontractor and the Government. The divisions or sections of the specifications are not intended to control the Contractor in dividing the work among subcontractors or to limit the work performed by any trade.

(b) The Contractor shall be responsible to the Government for acts and omissions of its own employees, and of subcontractors and their employees. The Contractor shall also be responsible for the coordination of the work of the trades, subcontractors, and material men.

(c) The Contractor shall, without additional expense to the Government, employ specialty subcontractors where required by the specifications.

(d) The Government or its representatives will not undertake to settle any differences between the Contractor and its subcontractors, or between subcontractors.

(End of clause)

1252.217-75 Lay days.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

LAY DAYS (APR 1984)

(a) Lay day time will be paid by the Government at the Contractor's stipulated bid price for this item of the contract when the vessel remains on the dry dock or Marine Railway as a result of any change that involves work in addition to that required under the basic contract.

(b) No cost for lay day time shall be paid until all accepted items of the basic contract for which a price was established by the Contractor and for which docking of the vessel was required have been satisfactorily completed.

(c) Days of hauling out and floating, whatever the hour, shall not be paid as lay day time, and days when no work is performed by the Contractor shall not be paid as lay day time.

(d) Payment of lay day time shall constitute complete compensation for all cost except for the direct cost of performing the changed work.

(End of clause)

1252.217-76 Liability and insurance.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

LIABILITY AND INSURANCE (JAN 1985)

(a) The Contractor shall exercise reasonable care and use his or her best efforts to prevent accidents, injury or damage to all employees, persons and property, in and about the work, and to the vessel or part thereof upon which work is done.

(b) The Contractor shall not, unless otherwise directed or approved in writing by the Contracting Officer, carry or incur the expense of any insurance against any form of loss or damage to the vessels or to the materials or equipment therefor to which the Government has title or which have been furnished by the Government for installation by the Contractor. The Government assumes the risks of loss of and damage to the vessels and such materials and equipment. The Government does not assume any risk with respect to loss or damage compensated for by insurance or otherwise or resulting from risks with respect to which the Contractor has failed to procure or maintain insurance, if available, as required or approved by the Contracting Officer; Provided, further, that under this clause the Government does not assume any risk with respect to, and will not pay for any costs of the Contractor for the inspection, repair, replacement, or renewal of any defects themselves in the vessel(s) or such materials and equipment due to (1) defective workmanship or defective materials or equipment performed by or furnished by the Contractor or its subcontractors or, (2) workmanship or materials or equipment performed by or furnished by the Contractor or its subcontractors which do(es) not conform to the requirements of the contract, whether or not any such defect is latent or whether or not any such non-conformance is the result of negligence; Provided, further, that under this clause the Government does not assume the risk of and will not pay for the costs of any loss, damage, liability or expense caused by, resulting from, or incurred as a consequence of delay or disruption of any type whatsoever; or willful misconduct or lack of good faith on the part of any of the Contractor's managers, superintendents or other equivalent representatives who have supervision or direction of (i) all or substantially all of the Contractor's business or (ii) all or substantially all of the Contractor's operation at any one plant;

Provided, however, That as to such risk assumed and borne by the Government, the Government shall be subrogated to any claim, demand or cause of action against third persons which exists in favor of the Contractor, and the Contractor shall, if required, execute a formal assignment or transfer of claims, demands or causes of action; Provided, further, that nothing contained in this paragraph shall create or give rise to any right, privilege or power in any person except the Contractor, nor shall any person (except the Contractor) be or become entitled thereby to proceed directly against the Government, or join the Government as a codefendant in any action against the Contractor's liability or for any other purpose. Notwithstanding the foregoing the Contractor shall bear the first $5,000 of loss or damage from each occurrence or incident the risk of which the Government otherwise would have assumed under the provisions of this paragraph.

(c) The Contractor indemnifies and holds harmless the Government, its agencies and instrumentalities, the vessel and its owners, against all suits, actions, claims, costs or demands, (including, without limitation, suits, actions, claims, costs or demands resulting from death, personal injury, and property damage) to which the Government, its agencies and instrumentalities, the vessel or its owner may be subject or put by reason of damage or injury (including death) to the property or person of any one other than the Government, its agencies, instrumentalities and personnel, the vessel or its owner, arising or resulting in whole or in part from the fault, negligence, wrongful act or wrongful omission of the Contractor, or any subcontractor, his or their servants, agents or employees; Provided, that the Contractor's obligation to indemnify under this paragraph (c) shall not exceed the sum of $300,000 on account of any one accident or occurrence in respect of any one vessel. Such indemnity shall include, without limitation, suits, actions, claims, costs or demands of any kind whatsoever, resulting from death, personal injury or property damage occurring during the period of performance of work on the vessel or within ninety (90) days after redelivery of the vessel; and with respect to any such suits, actions, claims, costs, or demands resulting from death, personal injury or property damage occurring after the expiration of such period, the rights and liabilities of the Government and the Contractor shall be as determined by other provisions of this contract and by law; Provided, however, that such indemnity shall apply to death occurring after such period which results from any personal injury received during the period covered by the Contractor's indemnity as provided herein.

(d) The Contractor shall, at his or her own expense, procure, and thereafter maintain such casualty, accident and liability insurance, in such forms and amounts as may be approved by the contracting officer, insuring the performance of his obligations under paragraph (c) of this clause. Further, the Contractor shall procure and maintain in force Workmen's Compensation Insurance (or its equivalent) covering his employees engaged on the work and shall insure the procurement and maintenance of such insurance by all subcontractors engaged on the work. The Contractor shall provide such evidence of such insurance as may be, from time to time, required by the Government.

(e) No allowance shall be made to the Contractor in the contract price for the inclusion of any premium expense or charge for any reserve made on account of self insurance for coverage against any risk assumed by the Government under this clause.

(f) As soon as practicable after the occurrence of any loss or damage the risk of which the Government has assumed, written notice of such loss or damage shall be given by the Contractor to the Contracting Officer. This notice shall contain full particulars of such loss or damage. If claim is made or suit is brought thereafter against the Contractor as a result or because of such event, the Contractor shall immediately deliver to the Government every demand, notice, summons or other process received by him or his representatives. The Contractor shall cooperate with the Government and, upon the Government's request, shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits; and the Government shall pay to the Contractor the expense, other than the cost of maintaining the Contractor's usual organization, incurred in so doing. The Contractor shall not, except at its own cost, voluntarily make any payment, assume any obligation, or incur any expense other than shall be imperative for the protection of the vessel or vessels at the time of said occurrence of such event.

(g) In the event of loss of or damage to any of the vessels or any of the materials or equipment therefor which may result in a claim against the Government under the insurance provisions of this contract, the Contractor promptly shall notify the Contracting Officer of such loss or damages, and the Contracting Officer may, without prejudice to any other right of the Government, either:

(1) Order the Contractor to proceed with replacement or repair in which event the Contractor shall effect such replacement or repair. The Contractor shall submit to the Contracting Officer a request for reimbursement of the cost of such replacement or repair together with such supporting documentation as the Contracting Officer may reasonably require, and shall identify such request as being submitted under the "Insurance" Clause of the contract. If the Government determines that the risk of such loss or damages is within the scope of the risks assumed by the Government under this clause, the Government will reimburse the Contractor for the reasonable, allowable cost of such replacement or repair, plus a reasonable profit (if the work of replacement or repair was performed by the Contractor) less the deductible amount specified in paragraph (b) of this clause. Payments by the Government to the Contractor under this Insurance Clause are outside the scope and shall not affect the pricing structure of the contract (firm fixed-price or incentive-type arrangement, as applicable), and are additional to the compensation otherwise payable to the Contractor under this contract; or

(2) In the event the Contracting Officer decides that the loss or damage shall not be replaced or repaired, (i) modify the contract appropriately consistent with the reduced requirements reflected by the unreplaced or unrepaired loss or damage, or (ii) terminate the repair of any part or all of the vessel(s) under the clause of this contract entitled "Termination for Convenience of the Government."

(End of clause)

1252.217-77 Title.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

TITLE (APR 1984)

Unless title to materials and equipment acquired or produced for, or allocated to, the performance of this contract shall have vested previously in the Government by virtue of other provisions of this contract, title to all materials and equipment to be incorporated in any vessel or part thereof, or to be placed upon any vessel or part thereof in accordance with the requirements of the contract, shall vest in the Government upon delivery thereof at the plant or such other location as may be specified in the Contract for the performance of the work: Provided, however, that the provisions of this clause or other provisions of this contract shall not be construed as relieving the Contractor from the full responsibility for all such Contractor-furnished materials and equipment or the restoration of any damaged work or as a waiver of the right of the Government to require the fulfillment of all the terms of this contract, it being expressly understood and agreed that the Contractor shall assume without limitation the risk of loss for any such materials and equipment until such time as all work is completed and accepted by the Government and the vessel is redelivered to the Government. Upon completion of the contract, or with the approval of the contracting officer at any time during the performance of the contract, all such Contractor-furnished materials and equipment not incorporated in any vessel or part thereof or not placed upon any vessel or part thereof, in accordance with the requirements of the contract, shall become the property of the Contractor, except those materials and equipment the cost of which has been reimbursed by the Government to the Contractor.

(End of clause)

1252.217-78 Discharge of liens.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

DISCHARGE OF LIENS (APR 1984)

The Contractor shall immediately discharge or cause to be discharged any lien or right in rem of any kind, other than in favor of the Government, which at any time exists or arises in connection with work done or materials furnished under this contract with respect to the machinery, fittings, equipment or materials for any vessel. If any such lien or right in rem is not immediately discharged, the Government may discharge or cause to be discharged such lien or right at the expense of the Contractor.

(End of clause)

1252.217-79 Delays.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

DELAYS (APR 1984)

When during the performance of this contract the Contractor is required to delay work on a vessel temporarily, due to orders or actions of the Government respecting stoppage of work to permit shifting the vessel, stoppage of hot work to permit bunkering, stoppage of work due to embarking or debarking passengers and loading or discharging cargo, and the Contractor is not given sufficient advance notice or is otherwise unable to avoid incurring addional costs on account thereof, an equitable adjustment shall be made in the price of the contract pursuant to the "Changes" clause.

(End of clause)

1252.217-80 Department of Labor safety and health regulations for ship repairing.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

DEPARTMENT OF LABOR SAFETY AND HEALTH REGULATIONS FOR SHIP REPAIRING (APR 1984)

Attention of the contractor is directed to Pub. L. 85-742, approved August 23, 1958 (72 Stat. 835, 33 U.S.C. 941), amending section 41 of the Longshoremen's and Harbor Worker's Compensation Act and to the Safety and Health Regulations for Ship Repairing promulgated thereunder by the Secretary of Labor (29 CFR Part 1501). These regulations apply to all ship repair and related work, as defined in the regulations, performed under this contract on the navigable waters of the United States including any drydock or marine railway. Nothing contained in this contract shall be construed as relieving the Contractor from any obligations which it may have for compliance with the aforesaid regulations.

(End of clause)

1252.217-81 Guarantee.

As prescribed at 1217.7001(b), insert the following clause in solicitations and contracts:

GUARANTEE (APR 1984)

In case any work done or materials furnished by the Contractor under this contract on or for any vessel or the equipment thereof shall, within* days from date of delivery of the vessel by the Contractor, prove defective or deficient, such defects or deficiencies shall, as required by the Government, be corrected and repaired by the Contractor at his or her expense to the satisfaction of the contracting officer: Provided, however, that with respect to any individual work item incomplete at the delivery of the vessel the guarantee period shall run from the date of completion of such item. The Government shall, if and when practicable, afford the Contractor an opportunity to effect such corrections and repairs themself, but when, because of conditions or the location of the vessel or for any other reason, it is impractical or undesirable to return it to the Contractor, or the Contractor fails to proceed promptly with any such repairs as directed by the contracting officer, such corrections and repairs shall be effected at the Contractor's expense at such other locations as the Government may determine. Where corrections and repairs are to be effected by other than the Contractor, due to nonreturn of the vessel to him or her, the Contractor's liability may be discharged by an equitable deduction in the price of the job. The Contractor's liability under this clause shall, however, in no event extend beyond the correction of such defects or deficiencies or payment for the cost thereof: Provided, however, that nothing in this clause shall be deemed to limit or relieve the Contractor of his or her responsibilities as set forth in the clause entitled "Liability and Insurance" and the clause entitled "Inspection" of this contract. At the option of the contracting officer, defects and deficiencies may be left in their then condition, and an equitable deduction from the Contract price, as agreed by the Contractor and contracting officer, shall be made therefor. If the Contractor and contracting officer fail to agree upon the equitable deduction from the contract price to be made, the dispute shall be determined as provided in the "Disputes" clause of this contract.

*To be inserted by the contracting officer (see 1217.7001(b)).

(End of clause)

1252.222-70 Service Contract Act of 1965 as amended, contracts of $2,500 or less.

As prescribed in 1222.1070-2(a), insert the following clause in solicitations and contracts:

SERVICE CONTRACT ACT OF 1965 AS AMENDED, CONTRACTS OF $2,500 OR LESS (AUG 1988)

Except to the extent that an exemption, variation, or tolerance would apply under 29 CFR 4.6 if this contract were in excess of $2,500, the Contractor and any subcontractor shall pay all employees working on the contract not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 through 206). All regulations and interpretations of the Service Contract Act of 1965 as amended, expressed in 29 CFR Part 4 are hereby incorporated by reference in this contract.

(End of clause)

[52 FR 44557, Nov. 19, 1987, as amended at 53 FR 28402, July 28, 1988; 53 FR 31007, Aug. 17, 1988]

1252.222-71 Strikes or picketing affecting timely completion of the contract work.

As prescribed in 1222.101-71(a), insert the following clause in solicitations and contracts:

STRIKES OR PICKETING AFFECTING TIMELY COMPLETION OF THE CONTRACT WORK (APR 1984)

Notwithstanding any other provision hereof, the Contractor is responsible for delays arising out of labor disputes, including but not limited to strikes, if such disputes are reasonably avoidable. A delay caused by a strike or by picketing which constitutes an unfair labor practice is not excusable unless the Contractor takes all reasonable and appropriate action to end such a strike or picketing, such as the filing of a charge with the National Labor Relations Board, the use of other available Government procedures, and the use of private boards or organizations for the settlement of disputes.

(End of clause)

1252.222-72 Strikes or picketing affecting access to FAA facility.

As prescribed in 1222.101-71(b), insert the following clause in solicitations and contracts:

STRIKES OR PICKETING AFFECTING ACCESS TO FAA FACILITY (APR 1984)

If the Contracting Officer notifies the Contractor in writing that a strike or picketing: (1) Is directed at the Contractor or any subcontractor or any employee of either, and (2) impedes or threatens to impede access by any person to the DOT facility or facilities where the site(s) of the work is (are) located, the Contractor shall take all appropriate action to end such strike or picketing, including, if necessary, the filing of a charge of unfair labor practice with the National Labor Relations Board or the utilization or any other available judicial or administrative remedies.

(End of clause)

1252.222-73—1252.222-74 [Reserved]

1252.222-75 Service Contract Act of 1965 as amended.

As prescribed in 1222.7002(b), insert the following clause in solicitations and contracts:

SERVICE CONTRACT ACT OF 1965 AS AMENDED (AUG 1988)

This contract is subject to the Service Contract Act of 1965, as amended (41 U.S.C. 351 *et seq.*) and is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor issued thereunder (29 CFR Part 4).

(a) *Compensation.* Each service employee employed in the performance of this contract by the contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this contract.

(b) *Conforming procedure.* (1) If there is such a wage determination attached to this contract, the contracting officer shall require that any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this section. (The information collection requirements contained in the following paragraphs of this clause have been approved by the Office of Management and Budget under OMB control number 1215—0150.)

(2) Such conforming procedure shall be initiated by the contractor prior to the performance of contract work by such unlisted class of employee. A written report of the proposed conforming action, including information regarding the agreement or disagreement of the authorized representative of the employees involved or, where there is no authorized representative, the employees themselves, shall be submitted by the contractor to the contracting officer no later than 30 days after such unlisted class of employees performs any contract work. The contracting officer shall review the proposed action and promptly submit a report of the action, together with the agency's recommendation and all pertinent information including the position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determinaion in the event of disagreement within 30 days of receipt or will notify the contracting officer within 30 days of receipt that additional time is necessary.

(3) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the contracting officer who shall promptly notify the contractor of the action taken. Each affected employee shall be furnished by the contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(4)(i) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classification based on the skill required and the duties performed.

(ii) In the case of a contract modification, an exercise of an option or extension of an existing contract, or in any other case where a contractor succeeds a contract under which the classification in question was previously conformed pursuant to this clause, a new conformed wage rate and fringe benefits may be assigned to such conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the contractor shall advise the contracting office of the action taken but the other procedures in paragraph (b)(2) of this clause need not be followed.

(iii) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(5) The wage rate and fringe benefits finally determined pursuant to paragraphs (b)(1) and (2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(6) Upon discovery of failure to comply with paragraphs (b)(1) through (5) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class of employees commenced contract work.

(c) *Adjustment.* If, as authorized pursuant to section 4(d) of the Service Contract Act of 1965 as amended, the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after 1 year and not less often than once every 2 years, pursuant to wage determinations to be issued by the Wage and Hour Division, Employment Standards Administration of the Department of Labor as provided in such Act.

(d) *Obligation to furnish fringe benefits.* The contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in Subpart D of 29 CFR Part 4, and not otherwise.

(e) *Minimum wage.* In the absence of a minimum wage attachment for this contract, neither the contractor nor any subcontractor under this contract shall pay any person performing work under the contract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this provision shall relieve the contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(f) *Obligations attributable to predecessor contracts.* If this contract exceeds a contract subject to the Service Contract Act of 1965 as amended, under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of a minimum wage attachment for this contract setting forth such collectively bargaining wage rates and fringe benefits, neither the contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 4.1(b) of 29 CFR Part 4 apply or unless the Secretary of Labor or his authorized representative finds, after a hearing as provided in § 4.10 of 29 CFR Part 4, that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in § 4.11 of 29 CFR Part 4, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract. 53 Comp. Gen. 401 (1973). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) *Notification to employees.* The contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract. (Approved by the Office of Management and Budget under OMB control number 1215-0150)

(h) *Safe and sanitary working conditions.* The contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services, and the contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) *Records.* (1) The contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, records containing the information specified in the following paragraphs (i)(1) (i) through (vi) of this clause for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor. (Items (i)(1) (i) through (iv) approved by the Office of Management and Budget under OMB control number 1215-0017 and items (i)(1) (v) and (vi) approved under OMB control number 1215-0150):

(i) Name and address and social security number of each employee.

(ii) The correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefits payments in lieu thereof, and total daily and weekly compensation of each employee.

(iii) The number of daily and weekly hours so worked by each employee.

(iv) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(v) A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representative pursuant to paragraph (b) of this clause. A copy of the report required by paragraph (b)(2) of this clause shall be deemed to be such a list.

(vi) Any list of the predecessor contractor's employees which had been funished to the contractor pursuant to paragraph (q) of this clause.

(2) The contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or make available such records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce such records, the contracting officer, upon direction of the Department of Labor and notification of the contractor, shall take action to cause suspension of any further payment or advance of funds until such violation ceases.

(j) *Interviews with employees.* The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(k) *Timing of payments.* The contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations. 29 CFR Part 4), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(l) *Withholding of payment and termination of contract.* The contracting officer shall withhold or cause to be withheld from the Government prime contractor under this or any other Government contract with the prime contractor such sums as an appropriate official of the Department of Labor requests, or such sums as the contracting officer decides may be necessary, to pay underpaid employees employed by the contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the agency may, after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause relating to the Service Contract Act of 1965 may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost.

(m) *Subcontracts.* The contractor agrees to insert this clause relating to the Service Contract Act of 1965 in all subcontracts subject to the Act. The term "contractor" as used in this clause in any subcontract is deemed to refer to the subcontractor, except in the term "Government prime contractor."

(n) *Service employees.* As used in this clause, the term "service employee" means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations. The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(o) *Civil Service rates.* The following statement is included in contracts pursuant to section 2(a)(5) of the Act and is for informational purposes only: The following classes of service employees expected to be employed under the contract with the Government would be subject, if employed by the contracting agency, to the provisions of 5 U.S.C. 5341 or 5 U.S.C. 5332 and would, if so employed, be paid not less than the following rates of wages and fringe benefits.

Employee class	Monetary wage

Fringe Benefits

Annual Leave: Two hours per week for service of less than three years; three hours per week for service of three years but less than 15 years; and 4 hours per week for service of 15 years or more.

Paid Holidays: Ten per year.

Government's contribution to sick leave and to life, accident, and health insurance: 5.1 percent of basic hourly rate.

Government's contribution to retirement pay: 7 percent of basic hourly rate.

NOTE: The wage rates and fringe benefits listed in this clause are included in the contract as required by section 2(a)(5) of the Service Contract Act of 1965, as amended, and are not minimum wage rates and fringe benefits required to be paid on this contract.

(p) *Contractor report on collective bargaining agreement.* If wages to be paid or fringe benefits to be furnished any service employees employed by the Government prime contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government prime contractor shall report such fact to the contracting officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions of amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof. (Approved by the Office of Management and budget under OMB control number 1215-0150)

(q) *Contractor list of employee names.* Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a contractor (predecessor) or successor (§ 4.173 of Regulations, 29 CFR Part 4), the incumbent prime contractor shall furnish to the contracting officer a certified list of the names of all service employees on the contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor contractors of each such service employee. The contracting officer shall turn over such list to the successor contractor at the commencement of the succeeding contract. (Approved by the Office of Management and Budget under OMB control number 1215-0150)

(r) *Rulings and interpretations.* Rulings and interpretations of the Service Contract Act of 1965, as amended, are contained in Regulations, 29 CFR Part 4.

(s) *Ineligible contractors and subcontractors.* (1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract purusant to section 5 of the Act.

(t) *Penalty for false statements.* The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(u) *Special employees.* Notwithstanding any of the provisions in paragraphs (a) through (r) of this clause relating to the Service Contract Act of 1965, the following employees may be employed in acordance with the following variations, tolerances, and exemptions, which the Secretary of labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of that Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Service Contract Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in Parts 525 and 528 of Title 29 of the Code of Federal Regulations.

(v) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire workforce under the registered program.

(w) *Tip credit.* An employee engaged in an occupation in which he or she customarily and regularly receives more than $30 a month in tips may have the amount of tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531: *Provided*, however, that the amount of such credit may not exceed $1.24 per hour beginning January 1, 1980, and $1.34 per hour after December 31, 1980. To utilize this proviso:

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit (approved by the Office of Management and Budget under OMB control number 1215-0017);

(4) The use of such tip credit must have been permitted under any predecessor collective-bargaining agreement applicable by virtue of section 4(c) of the Act.

(x) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 4, 6, and 8. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

[52 FR 44557, Nov. 19, 1987, as amended at 53 FR 28402, July 28, 1988; 53 FR 31007, Aug. 17, 1988]

1252.222-76 [Reserved]

1252.222-77 Fair Labor Standards Act and Service Contract Act—Price adjustment (multiyear and option contracts).

As prescribed in 1222.7002(b), insert the following clause in solicitations and contracts:

FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT—PRICE ADJUSTMENT (MULTIYEAR AND OPTION CONTRACTS) (JAN 1985)

(a) The Contractor warrants that the prices in this contract do not include any allowance for any contigency to cover increased costs for which adjustment is provided under this clause.

(b) The minimum prevailing wage determination, including fringe benefits, issued under the Service Contract Act of 1965 (41 U.S.C. 351 through 358), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current at the beginning of each renewal option period, shall apply to any renewal of this contract. When no such determination has been made applicable to this contract, then the current Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) shall apply to any renewal of this contract.

(c) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Contractor in wages or fringe benefits of employees working on this contract to comply with—

(1) The Department of Labor determination of minimum prevailing wages and fringe benefits applicable at the beginning of the renewal option period;

(2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or

(3) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(d) Any such adjustment will be limited to increases or decreases in wages or fringe benefits as described in paragraph (c) of this clause, and to the concomitant increases or decreases in social security and unemployment taxes and worker's compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profits.

(e) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(f) The Contracting Officer or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

(End of clause)

1252.222-78 Fair Labor Standards Act and Service Contract Act—price adjustment.

As prescribed in 1222.7002-2(b), insert the following clause in solicitations and contracts:

FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT—PRICE ADJUSTMENT (JAN 1985)

(a) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Contractor in wages or fringe benefits of employees working on this contract to comply with—

(1) An increased or decreased wage determination applied to this contract by operation of law; or

(2) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(c) Any such adjustment will be limited to increases or decreases in wages or fringe benefits as described in paragraph (b) of this clause, and to the concomitant increases or decreases in social security and unemployment taxes and workers' compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profits.

(d) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(e) The Contracting Officer or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

(End of clause)

1252.222-79 Service Contract Act requirements as to vacation pay.

As prescribed in 1222.7002(b), insert the following clause in solicitations and contracts:

SERVICE CONTRACT ACT REQUIREMENTS AS TO VACATION PAY (JAN 1985)

(a) *Employee Credit for Service with a Predecessor Contractor.* This paragraph (a) applies if the contract wage determination contains a provision referring to a "successor" contractor, as, e.g., "1 week paid vacation after 1 year of service with a contractor or successor." "Successor" as used in such provision means the Contractor on this contract when the Contractor employs, without a break in service, a service employee formerly employed by the immediately preceding contractor under a similar Government contract at the same location ("predecessor contractor"). Consequently, if the Contractor employs without a break in service, any service employee who was employed by its predecessor contractor for similar work at the same location, the Contractor in computing the employee's "year of service" shall include all continuous service for the predecessor contractor subsequent to the later of the following dates: (1) The date of employment by the predecessor contractor; or (2) if, while employed by the predecessor contractor, the employee had an anniversary date or dates on which the employee became entitled to vacation benefits, the most recent of such anniversary dates. Thus, the Contractor is liable for such employee's full vacation benefit on such anniversary date even though during part of the "year of service" the employee had been employed by the predecessor contractor.

(b) *When Predecessor Contractor Not Involved.* This paragraph (b) applies if the contract wage determination does not refer to a "successor" contractor, but contains a provision such as "1 week paid vacation after 1 year of service with an employer." The term "an employer" in such provision means the Contractor on this contract. The Contractor in computing a service employee's "year of service" shall include all continuous service performed by the employee subsequent to the later of the following dates: (1) The date of employment by the Contractor, or (2) the employee's most recent anniversary date for which a paid vacation was granted.

(c) *Part-time Employees.* If the contract wage determination contains either type of provision quoted in paragraph (a) or (b) of this clause, part-time service employees working a regularly scheduled work week shall receive a paid vacation on a pro-rata basis. For example, an employee who has worked for the Contractor two days per week for a year [or, without a break in service, for the Contractor and a predecessor contractor where the wage determination contains language like that quoted in paragraph (a) of this clause] shall be entitled to two days paid vacation or two-fifths of the vacation benefits to which full-time employees are entitled.

(d) *Break in Service.* For purposes of this provision, the term "break in service" does not include an employee's change in employment status from an employee of a predecessor contractor to an employee of the Contractor.

(End of clause)

1252.223-70 [Reserved]

1252.223-71 Accident and fire reporting.

As prescribed in 1223.7001(a) insert the following clause in solicitations and contracts:

ACCIDENT AND FIRE REPORTING (APR 1984)

(a) The Contractor shall report to the Contracting Officer any accident or fire occurring at the site of the work which causes

(1) A fatality or as much as one lost work day on the part of any employee of the Contractor or any subcontractor at any tier;

(2) Damage of $1,000 or more to Federal property either real or personal;

(3) Damage to Contractor or subcontractor owned or leased motor vehicles or mobile equipment;

(4) Damage for which a contract time extension may be requested.

(b) Accident and fire reports required by paragraph (a) of this clause, shall be accomplished by the following means:

(1) Accidents or fires resulting in a death, hospitalization of five or more persons, or destruction of Federal property (either real or personal) the total value of which is estimated at $100,000 or more, shall be reported immediately by telephone to the Contracting Officer or his authorized representative and shall be confirmed by telegram within 24 hours to the Contracting Officer. Such telegram shall state all known facts as to extent of injury and damage and as to cause of the accident or fire.

(2) Other accident and fire reports required by paragraph (a) of this clause, may be reported by the Contractor using a state, private insurance carrier, or contractor accident report form which provides for the statement of: (i) The extent of injury; and (ii) the damage and cause of the accident or fire. Such report shall be mailed or otherwise delivered to the Contracting Officer within 48 hours of the occurrence of the accident or fire.

(c) The contractor shall assure compliance by subcontractors at all tiers with the requirements of this clause.

(End of clause)

1252.223-72 Protection of human subjects.

As prescribed in 1223.7001(b) insert the following clause in solicitations and contracts:

PROTECTION OF HUMAN SUBJECTS (NOV 1987)

The contractor shall comply with the NHTSA principles and procedures (in accordance with NHTSA Orders 700-1, 700-3, and 700-4) for the protection of human subjects participating in activities supported directly or indirectly by grants or contracts from NHTSA. In fulfillment of its assurance:

A committee competent to review projects and activities that involve human subjects shall be established and maintained by the contractor.

The committee shall be assigned responsibility to determine for each activity planned and conducted that:

The rights and welfare of subjects are adequately protected.

The risks to subjects are outweighed by potential benefits.

The informed consent of subjects shall be obtained by methods that are adequate and appropriate.

Committee reviews are to be conducted with objectivity and in a manner to ensure the exercise of independent judgment of the members. Members shall be excluded from reviews of projects or activities in which they have an active role or a conflict of interest.

Continuing constructive communication between the committee and the project directors must be maintained as a means of safeguarding the rights and welfare of subjects.

Facilities and professional attention required for subjects who may suffer physical, psychological, or other injury as a result of participation in an activity shall be provided.

The committee shall maintain records of committee reviews of applications and active projects, of documentation of informed consent, and of other documentation that may pertain to the selection, participation, and protection of subjects. Detailed records shall be maintained of circumstances of any reviews that adversely affect the rights or welfare of the individual subjects. Such materials shall be made available to NHTSA upon request. The retention period for such records and materials shall be as specified at FAR 4.703.

Periodic reviews shall be conducted by the contractor to assure, through appropriate administrative overview, that the practices and procedures designed for the protection of the rights and welfare of subjects are being effectively applied.

NOTE: If the contractor has a Department of Health and Human Services approved Institutional Review Board (IRB) which can appropriately review this contract in accordance with the technical requirements and NHTSA Orders 700-1, 700-3, and 700-4, that IRB will be considered acceptable for the purposes of this contract.

(End of clause)

1252.228-70 [Reserved]

1252.228-71 Loss of or damage to leased aircraft.

As prescribed in 1228.306-70-1 (a) and (b) insert the following clause in solicitations and contracts:

LOSS OF OR DAMAGE TO LEASED AIRCRAFT (APR 1984)

(a) The Government assumes all risk of loss of, or damage (except normal wear and tear) to, the leased aircraft during the term of this lease while the aircraft is in the possession of the Government.

(b) In the event of damage to the aircraft, the Government, at its option, shall make the necessary repairs with its own facilities or by contract, or pay the Contractor the reasonable cost of repair of the aircraft.

(c) In the event the aircraft is lost or damaged beyond repair, the Government shall pay the Contractor the sum equal to the fair market value of the aircraft at the time of such loss or damage, which value may be specifically agreed to in the clause "Fair Market Value of Aircraft", less the salvage value of the aircraft. However, the Government may retain the damaged aircraft or dispose of it as it wishes. In that event, the Contractor will be paid the fair market value of the aircraft as stated in the clause.

(d) The Contractor certifies that the contract price does not include any cost attributable to hull insurance or to any reserve fund it has established to protect its interest in the aircraft. If, in the event of loss or damage to the leased aircraft, the Contractor receives compensation for such loss or damage in any form from any source, the amount of such compensation shall be: (1) Credited to the Government in determining the amount of the Government's liability; or (2) for an increment of value of the aircraft beyond the value for which the Government is responsible.

(e) In the event of loss of or damage to the aircraft, the Government shall be subrogated to all rights of recovery by the Contractor against third parties for such loss or damage and the Contractor shall promptly assign such rights in writing to the Government.

(End of clause)

1252.228-72 Fair market value of aircraft.

As prescribed in 1228.306-70-1(c) insert the following clause in solicitation and contracts.

FAIR MARKET VALUE OF AIRCRAFT (APR 1984)

For purposes of the clause entitled "Loss of or Damage to Leased Aircraft", it is agreed that the fair market value of the aircraft to be used in the performance of this contract shall be the lesser of the two values set out in paragraphs (a) and (b) of this clause:

(a) $______ or

(b) If the contractor has insured the same aircraft against loss or destruction in connection with other operations, the amount of such insurance coverage on the date of the loss or damage for which the Government may be responsible under this contract.

(End of clause)

1252.228-73 Risk and indemnities.

As prescribed in 1228.306-70-1(d) insert the following clause in solicitations and contracts:

RISK AND INDEMNITIES (APR 1984)

The Contractor hereby agrees to indemnify and hold harmless the Government, its officers and employees from and against all claims, demands, damages, liabilities, losses, suits and judgments (including all costs and expenses incident thereto) which may be suffered by, accrue against, be charged to or recoverable from the Government, its officers and employees by reason of injury to or death of any person other than officers, agents, or employees of the Government or by reason of damage to property of others of whatsoever kind (other than the property of the Government, its officers, agents or employees) arising out of the operation of the aircraft. In the event the Contractor holds or obtains insurance in support of this covenant, a Certificate of Insurance shall be delivered to the Contracting Officer.

(End of clause)

1252.235-70 [Reserved]

1252.235-71 Recoupment of development costs.

As prescribed in 1235.070 insert the following clause in solicitations and contracts:

RECOUPMENT OF DEVELOPMENT COSTS (APR 1984)

(a) As may be determined by the contracting officer to be fair, reasonable and equitable, the contractor shall pay to the Government up to five percent (5%) of sums hereafter received by or credited to the Contractor or its privies (including subcontractors) on sales or leases (exclusive of sales or leases to the U.S. Government, either directly or indirectly through Government prime contractors or subcontractors) of any product which is substantially the same in design as, or which is directly derived from, that developed by the Contractor or any of its subcontractors in the performance of this contract.

(b) In selling or leasing the product identified in paragraph (a) of this clause, to the Government, either directly or indirectly through Government prime Contractors or subcontractors, the Contractor or its privies (including subcontractors) shall notify the purchaser or lessee in writing that the product was developed under a Department of Transportation contract containing a Recoupment of Development Costs clause and that the purchase or lease price of such product is less than the price of such product when sold or leased to other than the Government by an amount no less than the Government's share under the Recoupment of Development Costs clause. A copy of each such notice shall be sent to the Contracting Officer. In the event the product is sold or leased to the Government, the amount by which the sales or lease price was reduced by virtue of this clause shall be credited to the amount recoverable under this clause.

(c) As may be determined by the Contracting Officer to be fair, reasonable and equitable, the Contractor shall also pay to the Government up to 33 percent of all sums hereafter received by, or credited to, the Contractor or its privies (including subcontractors) as payments under technical agreements permitting others (1) to sell, lease, or manufacture the product identified in paragraph (a) of this clause, and (2) to use any process which is substantially the same as, or which is directly derived from, that developed by the Contractor or any of its subcontractors in the performance of this contract.

(d) Recoupment by the Government under this cluase shall be limited to amounts paid and credited to the Contractor under this contract. Payments to the Government under this clause shall not be so high as to destroy the Contractor's competitive position for the product involved, provided that the product is otherwise reasonably priced and efficiently and economically produced.

(e) The Contractor shall report to the Government all sales, leases, licensing agreements, royalties and receipts which might reasonably be considered to be subject to this clause; and the Contractor shall promptly render accurate, certified accounts thereon to the Government at reasonable intervals.

(End of clause)

1252.236-70 [Reserved]

1252.236-71 Special precautions for work at operating airports.

As prescribed in 1236.570 insert the following clause in solicitations and contracts:

Special Precautions for Work at Operating Airports (Apr 1984)

(a) When work is to be performed at an operating airport, the Contractor must arrange its work schedule so as not to intefere with flight operations. Such operations will take precedence over construction convenience. Any operations of the Contractor which would otherwise interfere with or endanger the operations of aircraft shall be performed only at times and in the manner directed by the Contracting Officer. The Government will make every effort to reduce the disruption of the Contractor's operation.

(b) Unless otherwise specified by local regulations, all areas in which construction operations are underway shall be marked by yellow flags during daylight hours and by red lights at other times. The red lights along the edge of the construction areas within the existing aprons shall be electric type of not less than 100 watts intensity placed and supported as required. All other construction markings on roads and adjacent parking lots may be either electric or battery type lights. These lights and flags shall be placed so as to outline the construction areas and the distance between any two flags or lights shall not be greater than 25 feet. The Contractor shall provide adequate watch to maintain the lights in working condition at all times other than daylight hours. The hour of beginning and the hour of ending of daylight will be determined by the Contracting Officer.

(c) All equipment and materials in the construction areas or when moved outside the construction area shall be marked with airport safety flags during the day and, when directed by the Contracting Officer, with red obstruction lights at night. All equipment operating on the apron, taxiway, runway and intermediate areas after darkness hours shall have clearance lights in conformance with instructions from the Contracting Officer. No construction equipment shall operate within 50 feet of aircraft undergoing fuel operations. Open flames are not allowed on the ramp except at times authorized by the Contracting Officer.

(d) Trucks and other motorized equipment entering the airport or construction area shall do so only over routes determined by the Contracting Officer. Use of runways, aprons, taxiways or parking areas as truck or equipment routes will not be permitted unless specifically authorized for such use. Flagmen shall be furnished by the Contractor at points on apron and taxiway for safe guidance of its equipment over these areas to assure right of way to aircraft. Areas and routes used during the contract must be returned to their original condition by the Contractor. The maximum speed allowed at the airport shall be as established by the airport management. Vehicles shall be operated so as to be under safe control at all times, weather and traffic conditions considered. Vehicles must be equipped with head and tail lights during the hours of darkness.

(End of clause)

1252.237-70 [Reserved]

1252.237-71 Qualifications of employees.

As prescribed in 1237.110 insert the following clause in solicitations and contracts:

Qualifications of Employees (Apr 1984)

The Contracting Officer may require dismissal from work of those employees which he/she deems incompetent, careless, insubordinate, unsuitable or otherwise objectionable, or whose continued employment he/she deems contrary to the public interest or inconsistent with the best interest of national security. The Contractor shall fill out, and cause each of its employees on the contract work to fill out, for submission to the Government, such forms as may be necessary for security or other reasons. Upon request of the Contracting Officer, the Contractor's employees shall be fingerprinted. Each employee of the contractor shall be a citizen of the United States of America, or an alien who has been lawfully admitted for permanent residence as evidenced by Alien Registration Receipt Card Form 1-151, or who presents other evidence from the Immigration and Naturalization Service that employment will not affect his/her immigration status.

(End of clause)

1252.242-70 Dissemination of information—educational institutions.

As prescribed in 1242.203-70(c), the following clause may be used in research contracts with educational institutions in lieu of the clause 1252.242-72.

Dissemination of Information—
Educational Institutions (Jan 1985)

The Department desires widespread dissemination of the results of funded transportation research. The contractor, therefore, may publish (subject to the provisions of the "Data Rights," and "Patent Rights" clauses of the contract) research results in professional journals, books, trade publications, or other appropriate media (a thesis or collection of theses should not be used to distribute results as dissemination will not be sufficiently widespread.) All costs of publication pursuant to this clause shall be borne by the contractor and shall not be charged to the Government under this or any other Federal contract. Any copy of material published under this clause must contain acknowledgment of the Department of Transportation's sponsorship of the research effort and a disclaimer stating that the published material represents the position of the author(s) and not necessarily that of the Department of Transportation. Articles for publication or papers to be presented to professional societies do not require the authorization of the contracting officer prior to release.

However, two copies of each article shall be transmitted to the contracting officer at least two weeks prior to release or publication. Press releases concerning the results or conclusions from the research under this contract, shall not be made or otherwise distributed to the public without prior written approval of the contracting officer. Publication under the terms of this clause does not release the contractor from the obligation of preparing and submitting to the contracting officer a final report containing all findings and results of research, as set forth in the schedule of this contract.

(End of clause)

1252.242-71 Contractor testimony.

As prescribed in 1242.203-70(a) insert the following clause in solicitations and contracts:

Contractor Testimony (Apr 1984)

All requests for the testimony of the contractor or its employees, and any intention to testify as an expert witness relating to: (1) Any work required by, and/or performed under, this contract; or (2) any information provided by any party to assist the contractor in the performance of this contract, shall be immediately reported to the contracting officer. Neither the contractor nor its employees shall testify on a matter related to work performed or information provided under this contract, either voluntarily or pursuant to a request, in any judicial or administrative proceeding unless approved by the contracting officer or required by a judge in a final court order.

(End of clause)

1252.242-72 Dissemination of contract information.

As prescribed in 1242.203-70(b) insert the following clause in solicitations and contracts:

Dissemination of Contract Information
(Apr 1984)

The Contractor shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning the results or conclusions made pursuant to the performance of this contract, without the prior written consent of the Contracting Officer. (Two copies of any material proposed to be published or distributed shall be submitted to the Contracting Officer.)

(End of clause)

1252.245-70 Government property reports.

Insert the following clause in Section H of all solicitations and contracts when Government property is provided to a contractor.

GOVERNMENT PROPERTY REPORTS (AUG 1988)

(a) The Contractor shall prepare a report as of July 31 each year listing all Government property (under the purview of this contract) in its possession and in the possession of all subcontractors during the previous 12 months. The report shall be prepared in the format outlined in Transportation Acquisition Regulation (TAR) 1245.505-14(b)(2). The contractor shall submit the report to the Contracting officer no later than September 15 of each year.

(b) The report shall include the following types of property:

(1) Capitalized Equipment, as defined at TAR 1245.

(2) Real property, as defined at FAR 45.101.

(3) Material maintained in stock, when the value is $50,000 or more.

(c) The report may include property from the following categories when so stipulated by the Contracting Officer in solicitations and contracts:

(1) Noncapitalized equipment, as defined at TAR 1245.

(2) Material maintained in stock, when its value is less than $50,000.

(End of clause)

[52 FR 44557, Nov. 19, 1987, as amended at 53 FR 28402, July 28, 1988; 53 FR 31007, Aug. 17, 1988]

PART 1253—FORMS

Sec.

1253.000 Scope of part.

Subpart 1253.1—General

1253.103 Exceptions.
1253.107 Obtaining forms.

Subpart 1253.2—Prescription of Forms

1253.200 Scope of subpart.
1253.204 Administrative matters.
1253.204-2 Contract reporting (DOT F. 4220.11).
1253.204-70 Procurement request forms (DOT F. 4200.1 and 4200.2).
1253.213 Small purchase and other simplified purchase procedures.
1253.213-70 Small purchase summary (DOT F. 4230.1).
1253.215 Contracting by negotiation.
1253.215-70 Price negotiation (DOT F. 4220.21; DOT F. 4220.32; and DD 1861).
1253.219 Small business and labor surplus area set-asides.
Sec.
1253.219-70 Information to offerors or quoters (DD Form 1707).
1253.222 Application of labor laws to Government acquisitions.
1253.222-70 Labor standards interview (DD Form 1567).
1253.222-71 Employee claim for wage restitution (DOT F. 4220.7).
1253.222-72 Labor standards investigation summary sheet (DD Form 1568).
1253.222-73 Summary of underpayments (DOT F. 4220.8).
1253.222-74 Establishment of additional wage rates (DOT F. 4220.10) and FHWA-1140.
1253.227 Patents, data, and copyrights.
1253.227-70 Report of inventions and subcontracts (DD Form 882).
1253.236 Construction and architect-engineer contracts.
1253.236-70 Preconstruction conference agenda and checklist (DOT F. 4220.3).
1253.242 Contract administration (FAA Form 4450-2 and DD Form 375).
1253.242-70 Contract close-out (DOT F. 4220.4, 4220.5 and 4220.6).
1253.246 Quality assurance.
1253.246-70 Inspection report of materials and/or services (FAA Form 256).

Subpart 1253.3—Illustrations of Forms

1253.300 Scope of subpart.
1253.370 Agency forms.

AUTHORITY: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

SOURCE: 52 FR 44574, Nov. 19, 1987, unless otherwise noted.

EDITORIAL NOTE: Forms referenced in Part 1253 do not appear in the Code of Federal Regulations.

1253.000 Scope of part.

This part (a) prescribes Department of Transportation (DOT) forms for use in acquisition of supplies and services, including construction and (b) contains procedures for exceptions to forms prescribed in FAR Part 53 or this Part 1253.

Subpart 1253.1—General

1253.103 Exceptions.

(a) Requests for exceptions to standard forms in FAR Part 53 shall be submitted, as prescribed in FAR 53.103, to the Senior Procurement Executive for further action.

(b) Requests for exceptions to DOT forms in Part 1253 shall be handled as deviations (see 1201.4).

(c) Computer-generated DOT forms are permissable provided that these forms are duplicted in their entirety.

1253.107 Obtaining forms.

(a) Copies of the DOT forms are available from the Chief, Procurement Management Division, Office of the Secretary, 400 7th Street SW., Washington, DC 20590.

(b) Requests for any Department of Labor forms or publications required for compliance with the following FAR subparts should be addressed to the offices indicated below.

(1) *Subparts 22.2, 22.3, 22.4, 22.6, and 22.10*

Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210.

(2) *Subparts 22.8, 22.9, 22.13, and 22.14*

Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, Washington, DC 20210.

Subpart 1253.2—Prescription of Forms

1253.200 Scope of subpart.

Consistent with the approach used in FAR Subpart 53.2, this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the TAR in which the form usage requirements are addressed.

1253.204 Administrative matters.

1253.204-2 Contract reporting (DOT F.4220.11).

The DOT Form F.4220.11, prescribed in DOT Order 1340.5C, Contract Information System, shall be used to provide acquisition records and statistics in lieu of the SF279, Individual Contract Action Report (over $10,000). A copy of each Data Input Form shall be retained in the individual contract file.

1253.204-70 Procurement request forms (DOT F.4200.1 and 4200.2).

Procurement request forms DOT F.4200.1 and DOT F.4200.2 (Continuation sheet) shall be used to request the acquisition of supplies, services, or construction, and may be used to request items obtained through FEDSTRIP, MILSTRIP, or similar single- or multi-line requisitioning methods.

1253.213 Small purchase and other simplified purchase procedures.

1253.213-70 Small purchase summary (DOT F.4230.1).

DOT Form F.4230.1 may be used to satisfy the small purchase documentation requirements set forth in FAR 13.106.

1253.215 Contracting by negotiation.

1253.215-70 Price negotiation (DOT F.4220.21; DOT F.4220.32; and DD 1861).

(a) ADP equipment and services. As prescribed in 1215.407(c), the form DOT F.4220.21 may be included in RFPs and required to be completed by offerors in addition to SF 1411 and other supporting documents.

(b) Weighted guidelines profit/fee objective. The following forms shall be used to compute profit or fee for actions covered under 1215.905-70 and FAR 15.9:

(1) DOT F.4220.32 Weighted Guidelines Profit/Fee Objective.

(2) DD 1861 Contract Facilities Capital and Cost of Money.

[52 FR 44574, Nov. 19, 1987, as amended at 53 FR 28402, July 28, 1988]

1253.219 Small business and labor surplus area set-asides.

1253.219-70 Information to offerors or quoters (DD Form 1707).

The DD Form 1707, Information to Offerors, may be used as prescribed by administration procedures.

1253.222 Application of labor laws to Government acquisitions.

The following forms are prescribed for use in connection with DOT construction contracts.

1253.222-70 Labor standards interview (DD Form 1567).

The DD Form 1567 shall be used to record the results of interviews with contractor employees working at the construction site. Section 5.6(a)(3) of the Labor Department regulations (29 CFR) requires Federal agencies to make such investigations as are deemed necessary to ensure compliance with the labor standards provisions contained in the contract. These investigations include interviews with employees to ascertain whether laborers and mechanics are being or have been properly classified and paid.

[52 FR 44574, Nov. 19, 1987, as amended at 53 FR 28402, July 28, 1988]

1253.222-71 Employee claim for wage restitution (DOT F.4220.7).

The DOT Form F.4220.7 shall be used by contractor employees to file claim for unpaid wages when contract funds have been transferred to the General Accounting Office to cover such underpayment. (Even though contract funds have been transferred to GAO to cover the underpayment, GAO requires that a claim be submitted before it will make payment directly to the employee.)

1253.222-72 Labor standards investigation summary sheet (DD Form 1568).

The DD Form 1568 shall be used as the first page of reports on special labor standards investigations to summarize the findings of the ivestigation.

1253.222-73 Summary of underpayments (DOT F.4220.8).

The DOT Form F. 4220.8 shall be used to summarize the findings of wage underpayment and liquidated damages and shall be included in the investigation report when a special labor standards investigation is made.

1253.222-74 Establishment of additional wage rates. (DOT F.4220.10 and FHWA-1140).

(a) Except as provided in paragraph (b) of this section, DOT Form F.4220.10 shall be used by the contractor to obtain the contracting officer's approval or disapproval of the contractor's proposed classification and wage rate for any category of laborers or mechanics not listed in the contract wage determination but needed in performance of the contract work. Procedures shall be established to assure contracting officer approval of additional classifications and rates prior to their use by the contrator.

(b) FHWA Form 1140 may be used by the Federal Highway Administration for direct Federal contracts and Federal-aid contracts in lieu of DOT Form F. 4220.10.

1253.227 Patents, data and copyrights.

[53 FR 28402, July 28, 1988]

1253.227-70 Report of inventions and subcontracts (DD Form 882).

The DD Form 882, Report of Inventions and Subcontracts, may be used as prescribed in administration procedures.

[52 FR 44574, Nov. 19, 1987. Redesignated at 53 FR 28402, July 28, 1988]

1253.236 Construction and architect-engineer contracts.

1253.236-70 Preconstruction conference agenda and checklist (DOT F. 4220.3).

The DOT Form F. 4220.3 Preconstruction conference agenda and checklist, or a similar checklist, shall be used as prescribed in 1236.305(b).

1253.242 Contract administration (FAA Form 4450-2 and DD Form 375).

The following forms may be used in the administration of contracts as prescribed by administration procedures.

Post-Award Conference Record (FAA Form 4450-2).

Production Progress Report (DD Form 375).

1253.242-70 Contract close-out (DOT F. 4220.4, 4220.5 and 4220.6).

The following forms shall be used to facilitate and document the close-out of cost-reimbursement contracts. Form DOT F. 4220.4 Contractor's Release shall also be used for construction contracts when the contracting officer requires a release, and may be used for any other type of contract when the contracting officer determines its use to be appropriate.

(a) DOT Form 4220.4 Contractor's Release.

(b) DOT Form 4220.5 Contractor's Assignment of Refunds, Rebates, Credits and Other Amounts.

(c) DOT Form 4220.6 Cumulative Claim and Reconciliation.

1253.246 Quality assurance.

1253.246-70 Inspection report of materials and/or services (FAA Form 256).

The FAA Form 256, Inspection Report of Material and/or Services, or a substantially similar form, shall be used as prescribed in 1246.6.

[52 FR 44574, Nov. 19, 1987, as amended at 53 FR 28402, July 28, 1988]

Subpart 1253.3—Illustrations of Forms

1253.300 Scope of subpart.

This subpart contains illustrations of Department of Transportation (DOT) and other agency forms referenced in this regulation.

1253.370 Agency forms.

The forms are illustrated in numerical order. The subsection numbers correspond with the DOT or other agency form number.

1253.370-4200.1 Form DOT F 4200.1, Procurement Request.
1253.370-4200.2 Form DOT F 4220.2, Procurement Request Continuation Sheet.
1253.370-4220.3 Form DOT F 4220.3, Preconstruction Conference Checklist.
1253.370-4220.4 Form DOT F 4220.4, Contractor's Release.
1253.370-4220.5 Form DOT F 4220.5, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts.
1253.370-4220.6 Form DOT F 4220.6, Cumulative Claim and Reconciliation.
1253.370-4220.7 Form DOT F 4220.7, Employee Claim for Wage Restitution.
1253.370-4220.8 Form DOT F 4220.8, Summary of Underpayments.
1253.370-4220.10 Form DOT F 4220.10, Establishment of Additional Wage Rates.
1253.370-4220.11 Form DOT F 4220.11, Contract Information System Data Imput Sheet.
1253.370-4220.21 Form DOT F 4220.21, ADP Equipment and Services.
1253.370-4220.32 Form DOT F 4220.32 Weighted Guidelines Profit/Fee Objective.
1253.370-4230.1 Form DOT F 4230.1, Small Purchase Summary.
1253.370-FAA-256 FAA Form 256, Inspection Report of Material and/or Services.
1253.370-FAA-4450-2 FAA Form 4450-2, Post-Award Conference Report.
1253.370—FHWA-1140 FHWA Form 1140, Additional Classification and Wage Rate Request.
1253.370-DD-375 DD Form 375, Production Progress Report.
1253.370-DD-882 DD Form 882, Report of Inventions and Subcontracts.
1253.370-DD-1567 DD Form 1567, Labor Standards Interview.
1253.370-DD-1568 DD Form 1568, Labor Standards Investigation Summary Sheet.
1253.370-DD-1707 DD Form 1707, Information to Offerors or Quoters.
1253.370-DD-1861 DD Form 1861, Contract Facilities Capital and Cost of Money.

CHAPTER 13—DEPARTMENT OF COMMERCE

(Parts 1300 to 1399)

SUBCHAPTER A—GENERAL

Part Page
1301 General 753
1302 Definitions of words and terms 756
1303 Improper business practices and personal conflicts of interest 757
1304 Administrative matters 758

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

1305 Publicizing contract actions 759
1306 Competition requirements 759
1307 Acquisition planning 760
1308 Required sources of supplies and services 760
1309 Contractor qualifications 761

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

1313 Small purchase and other simplified purchase procedures 764
1314 Sealed bidding 764
1315 Contracting by negotiation 764
1316 Types of contracts 767
1317 Special contracting methods 767

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

1319 Small business and small disadvantaged business concerns 769
1322 Application of labor laws to government acquisitions 770
1324 Protection of privacy and freedom of information 771
1325 Foreign acquisition 771

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

1331 Contract cost principles and procedures 772

Part *Page*
1332 Contract financing 772
1333 Protests, disputes and appeals 773

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

1334 Major system acquisition 776
1336 Construction and architect-engineer contracts 766
1337 Service contracting 777

SUBCHAPTER G—CONTRACT MANAGEMENT

1342 Contract administration 778
1345 Government property 778
1349 Termination of contracts 778

SUBCHAPTER H—CLAUSES AND FORMS

1352 Solicitation provisions and contract clauses 780
1353 Forms 792

SUBCHAPTER A—GENERAL

PART 1301—GENERAL

Subpart 1301.1—Purpose, Authority, Issuance

Sec.
1301.100 Scope of subpart.
1301.101 Purpose.
1301.102 Authority.
1301.103 Applicability.
1301.104 Issuance.
1301.104-1 Publication and code arrangement.
1301.104-2 Arrangement of regulations.
1301.104-3 Copies.

Subpart 1301.2—Administration

1301.201-1 The two FAR councils.

Subpart 1301.3—Agency Acquisition Regulations

1301.301 Policy.
1301.303 Codification and public participation.

Subpart 1301.4—Deviations

1301.402 Policy.

Subpart 1301.5—Agency and Public Participation

1301.501 Solicitation of agency and public views.

Subpart 1301.6—Contracting Authority and Responsibilities

1301.601 General.
1301.601-70 Responsibilities of Heads of Contracting Activities.
1301.601-71 Responsibilities of the Procurement Executive.
1301.603 Selection, appointment, and termination of appointment.
1301.603-70 Ratification of unauthorized contract awards.
1301.603-71 Responsibility of other Government personnel.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486 (c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Source: 49 FR 12956, Mar. 30, 1984, unless otherwise noted.

Subpart 1301.1—Purpose, Authority, Issuance

1301.100 Scope of subpart.

This subpart states the relationship of the Commerce Acquisition Regulation (CAR) to the Federal Acquisition Regulation (FAR). This subpart also explains the purpose, authority and issuance of the CAR.

1301.101 Purpose.

(a) Chapter 13 of Title 48 of the Code of Federal Regulations shall be known as the Commerce Acquisition Regulation (CAR).

(b) The purpose of the CAR is to implement and supplement the FAR within the Department of Commerce. Since the CAR is intended to supplement and implement the FAR without paraphrasing or duplicating FAR language, the CAR should be read in relation to the FAR.

[49 FR 12956, Mar. 30, 1984, as amended at 51 FR 15329, Apr. 23, 1986]

1301.102 Authority.

The CAR is prescribed by the Department Procurement Executive pursuant to a delegation initiating from the Secretary of Commerce in accordance with the Federal Property and Administrative Services Act of 1949, as amended, and other applicable law and regulation.

1301.103 Applicability.

The FAR and CAR apply to all acquisitions within the Department of Commerce.

1301.104 Issuance.

1301.104-1 Publication and code arrangement.

(a) The CAR is published in (1) daily issues of the Federal Register, (2) cumulative form in the Code of Federal Regulations (CFR), and (3) a separate loose-leaf edition.

(b) The CAR is issued as Chapter 13 of Title 48 of the CFR.

1301.104-2 Arrangement of regulations.

(a) *General.* The CAR is divided into the same parts, subparts, sections, subsections and paragraphs as the FAR. When FAR coverage is adequate by itself, there will be no corresponding CAR coverage.

(b) *Numbering.* Where the CAR implements the FAR, the CAR part, subpart, section or further subdivision will be numbered the same as the corresponding FAR part, subpart, section, or further subdivision except that the CAR implementation will be preceded by a 13 or 130 so that there are four numbers to the left of the first decimal. Where the CAR supplements the FAR, supplementing material will be assigned the number 70 and above. The placement of the sequence of 70 numbers in relation to the decimal point will depend on what division of the FAR is supplemented.

(c) *References and citations.* (2) This regulation may be referred to as the Commerce Acquisition Regulation (CAR).

(3) References to FAR materials will include FAR and the identifying number, for example, FAR 1.402. Reference to CAR materials will consist of the identifying number, for example 1301.402.

1301.104-3 Copies.

(a) Copies of the CAR in Federal Register or CFR form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, D.C. 20402. Requests should reference the CAR as Chapter 13 of Title 48 of the Code of Federal Regulations.

(b) Loose-leaf copies of the CAR are distributed within the Department by the Procurement Executive.

[49 FR 12956, Mar. 30, 1984, as amended at 51 FR 15329, Apr. 23, 1986]

Subpart 1301.2—Administration

1301.201-1 The two FAR councils.

(b) The Department representatives to the Civilian Agency Acquisition Council will be appointed by the Procurement Executive. The Procurement Executive will be responsible for coordinating and advocating Department proposed revisions to the FAR.

[51 FR 15329, Apr. 23, 1986]

Subpart 1301.3—Agency Acquisition Regulations

1301.301 Policy.

(a) The Procurement Executive will issue Department acquisition policy and procedure in the CAR when necessary to implement or supplement the FAR.

(b) The Procurement Executive or designee may issue internal Department guidance in the form of Acquisition Letters, policy manuals, or model operating procedures. Documents issued under this authority are not published in the Federal Register.

(1) Acquisition Letters are serially numbered letters which provide immediate short term policy guidance on selected acquisition topics to Department contracting offices. They normally expire within one year from the date of issuance.

(2) The Commerce Acquisition Manual is a manual which provides long term policy guidance on selected acquisition topics to Department contracting offices. The guidance contained in the manual normally remains in effect until cancelled or revised. The numbering system parallels the FAR to the greatest extent practical.

(c) Heads of Contracting Activities may issue internal operating procedures for their contracting activities. These internal operating procedures may include routine office procedures, procedures which implement policy prescribed by the Procurement Executive, and the dissemination of guidance or information to program officials who may be affected by the policy. Heads of Contracting Activities shall not prescribe policy and shall not issue any procedures which appear to be in conflict with policy issued by the Procurement Executive.

[49 FR 12956, Mar. 30, 1984, as amended at 50 FR 19363, May 8, 1985; 51 FR 1377, Jan. 13, 1986; 51 FR 15329, Apr. 23, 1986]

1301.303 Codification and public participation.

(a) The CAR is published as Chapter 13 of Title 48 of the Code of Federal Regulations.

(b) Public participation procedure is described in 1301.5.

Subpart 1301.4—Deviations

1301.402 Policy.

Requests for authority to deviate from the provisions of the FAR or the CAR shall be submitted to the Procurement Executive as soon as the need to deviate is known. Requests shall be in writing and reasonably describe the deviation desired, the reason for the deviation, and the time by which a decision is needed. When timing is crucial, the written request should be preceded by a telephone request to the Procurement Executive. Requests for both individual deviations and class deviations shall be considered and decided upon by the Procurement Executive. When requests are received for class deviations from FAR provisions, the Procurement Executive shall consult with the chairperson of the Civilian Agency Acquisition Council. (see FAR 1.404). Individuals responsible for unauthorized deviations may be considered for disciplinary action as described in the Department Administrative Order on *Discipline* (DAO 202-751).

[49 FR 12956, Mar. 30, 1984, as amended at 51 FR 15329, Apr. 23, 1986]

Subpart 1301.5—Agency and Public Participation

1301.501 Solicitation of agency and public views.

The initial CAR was published with a notice of proposed rulemaking inviting public comments, review and analysis of comments received, and publication of a final rule. The final rule included a discussion of the public comments received and described any changes made as a result of the comments. A future issuance under this title may or may not require publication for public participation, depending on whether the issuance is a significant revision of the FAR which alters the substantive meaning of any coverage in the FAR having a substantive impact on the public. Each future issuance will be considered on a case-by-case basis. If a future issuance is determined by the Procurement Executive to be a significant revision of the FAR, that issuance shall be published for public participation. Any issuance under this title shall be done by or with the concurrence of the Procurement Executive.

[49 FR 12956, Mar. 30, 1984, as amended at 51 FR 15329, Apr. 23, 1986]

Subpart 1301.6—Contracting Authority and Responsibilities

1301.601 General.

Contracting authority vests with the Secretary of Commerce. The Secretary has delegated this authority to the Assistant Secretary for Administration who has delegated this authority, with the right to redelegate, to the Procurement Executive, as prescribed in the Department Administrative Order on *Procurement Authority* (DAO 208-2).

1301.601-70 Responsibilities of Heads of Contracting Activities.

Heads of Contracting Activities shall be responsible for directing and maintaining efficient contract operations within their contracting activities. Adequate controls shall be established to assure compliance with applicable laws, regulations, and policy guidance from the Procurement Executive. Heads of Contracting Activities shall provide the necessary coordination and cooperation required for periodic oversight reviews conducted by the Procurement Executive.

[49 FR 12956, Mar. 30, 1984, as amended at 51 FR 15329, Apr. 23, 1986]

1301.601-71 Responsibilities of the Procurement Executive.

The Procurement Executive shall establish Department-wide policy for contracting activities. Also, the Procurement Executive shall conduct periodic oversight reviews of Department contracting activities pursuant to the Department Administrative Order on Contracting (Procurement)

Review and Approval Requirements (DAO 208-5), to assure that Department contracting activities are operating efficiently and in accordance with the provisions of the FAR, the CAR, and Department policy.

[49 FR 12956, Mar. 30, 1984, as amended at 51 FR 15330, Apr. 23, 1986]

1301.603 Selection, appointment, and termination of appointment.

The Department's systems for selection, appointment and termination of appointment of contracting officers is contained in the *Contracting Officer Certification/Warrant Program*.

1301.603-70 Ratification of unauthorized contract awards.

(a) The Department is not bound by any formal or informal type of agreement or contractual commitment which is made by persons who are not delegated contracting authority. When these unauthorized acts are discovered they shall be immediately reported to the Head of the Contracting Activity concerned. The Head of the Contracting Activity shall:

(1) Immediately inform any person who is performing work as a result of an unauthorized commitment that the work is being performed at that person's risk;

(2) Inform the person who made the unauthorized commitment of the seriousness of the act and the possible consequences;

(3) Ensure receipt of documentation detailing the actions taken and the reasons for those actions; and

(4) Decide whether ratification of the unauthorized act is proper, and take appropriate action.

1301.603-71 Responsibility of other Government personnel.

The responsibility of other Government personnel is generally described in the Department's procurement requisitioning guides and the Department Administrative Order on the *Procurement Planning System* (DAO 208-15). These documents are designed for internal Department use.

PART 1302—DEFINITIONS OF WORDS AND TERMS

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1302.1—Definitions

1302.1-1 Definitions.

Acquisition Executive The Acquisition Executive, as defined in OMB Circular A-109, means the Assistant Secretary for Administration. The Acquisition Executive monitors the development of major systems and reviews their progress through the major systems acquisition process.

Department When used in the CAR, Department means the Department of Commerce.

Head of the Agency means the Secretary of Commerce and those designees which have been delegated the authority to act for the Secretary of Commerce in specifically delegated areas. The head of the agency for procurement matters is the Assistant Secretary for Administration. This authority for procurement matters has been further delegated to the Procurement Executive pursuant to the Department Administrative Order on *Procurement Authority* (DAO 208-2). Where the term "Agency head or designee" is used, that term shall mean the Procurement Executive unless otherwise indicated in the CAR.

Head of the Contracting Activity means the official who has overall responsibility for managing the contracting activity, as more fully described in the Department Administrative Order on *Procurement Authority* (DAO 208-2).

Head of the contracting office means the official who heads the office that awards and administers contracts, as more fully described in the Department Administrative Order on *Procurement Authority* (DAO 208-2).

Head of the Operating Unit means the Administrator of the National Oceanic and Atmospheric Administration (NOAA), acting as the host for the Department's Regional Administrative Support Centers, and any Head of the Operating Unit as defined in Department Organization Order (DOO) 1-1 so long as that Operating Unit is responsible for its own contracting operations.

Procurement Executive means the official delegated broad procurement authority under the Department Administrative Order on *Procurement Authority* (DAO 208-2). Procurement Executive also means the Senior Procurement Executive. Duties of the Procurement Executive include the following:

(a) Prescribe and publish Department procurement policies, regulations and procedures;

(b) Enter into, make determinations and decisions and take other actions, consistent with appropriate policies, regulations and procedures with respect to purchases, contracts, leases, sales, agreements and other transactions, except those required by law or regulation to be made by other authority;

(c) Designate contracting officers and representatives thereof;

(d) Establish clear lines of contracting authority;

(e) Exercise priorities authority concerning the internal procurement needs of the Department, in accordance with the provisions of the Defense Production Act of 1950 (50 U.S.C. App. 2071, *et seq.*), Department of Defense Delegation of Priorities Authority, dated October 21, 1958, and applicable policies and regulations;

(f) Evaluate and monitor the Department's procurement system performance;

(g) Manage and enhance career development of the procurement work force;

(h) Examine, in coordination with the OFPP, the procurement system to determine specific areas where Government-wide performance standards should be established and applied and participate in the development of Government-wide procurement policies, regulations and standards;

(i) Determine areas for Department unique standards and develop unique Department-wide standards;

(j) Promote full and open competition; and

(k) Certify to the Department head that the procurement system meets approved standards.

[49 FR 12958, Mar. 30, 1984, as amended at 50 FR 19363, May 8, 1985; 51 FR 1377, Jan. 13, 1986; 51 FR 15330, Apr. 23, 1986]

PART 1303—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1303.1—Safeguards

Sec.

1303.101-3 Agency regulations.

Subpart 1303.2—Contractor Gratuities to Government Personnel

1303.203 Reporting procedures.

Subpart 1303.3—Reports of Identical Bids and Suspected Antitrust Violations

1303.302-70 Reporting requirements.

Subpart 1303.4—Contingent Fees

1303.409 Misrepresentations or Violations of the Covenant Against Contingent Fees.

Subpart 1303.5—Other Improper Business Practices

1303.502 Subcontractor kickbacks.

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

SOURCE: 49 FR 12959, Mar. 30, 1984, unless otherwise noted.

Subpart 1303.1—Safeguards

1303.101-3 Agency regulations.

The agency rules implementing Executive Order 11222 are contained in the Department Administrative Order on *Employee Responsibilities and Conduct* (DAO 202-735).

Subpart 1303.2—Contractor Gratuities to Government Personnel

1303.203 Reporting procedures.

Suspected violations of the Gratuities clause shall be reported to the head of the contracting office in writing detailing the circumstances. The head of the contracting office will evaluate the report and if the allegations appear to support a violation the matter will be referred to the Office of Inspector General in accordance with the Department Administrative Order on *Inspector General Investigations* (DAO 207-10).

Subpart 1303.3—Reports of Identical Bids and Suspected Antitrust Violations

1303.302-70 Reporting requirements.

(a) Executive Order 12430 revoked the requirement of Executive Order 10936 to submit a report to the Attorney General on identical bids.

(b) Suspected anti-competitive practices and antitrust law violations as described in FAR 3.301 and FAR 3.303 shall be reported to the general counsel through the Head of the Contracting Activity. A copy of the report shall be sent to the Procurement Executive concurrently with the submission to the general counsel.

Subpart 1303.4—Contingent Fees

1303.409 Misrepresentations or Violations of the Covenant Against Contingent Fees.

Suspected violations of the Covenant Against Contingent Fees shall be reported to the Office of Inspector General in accordance with the Department Administrative Order on *Inspector General Investigations* (DAO 207-10).

Subpart 1303.5—Other Improper Business Practices

1303.502 Subcontractor kickbacks.

Suspected violations of the Anti-Kickback Act shall be reported to the Office of Inspector General in accordance with the Department Administrative Order on *Inspector General Investigations* (DAO 207-10).

PART 1304—ADMINISTRATIVE MATTERS

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1304.6—Contract Reporting

1304.601 Federal Procurement Data System.

(c) The Department uses a computer generated reporting system to collect and report data for contract actions over $10,000. The data collection points are identified within a standardized procurement numbering system format specified in the DOC Procurement Data System Handbook.

[50 FR 19363, May 8, 1985, and 51 FR 1377, Jan. 13, 1986]

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 1305—PUBLICIZING CONTRACT ACTIONS

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1305.5—Paid Advertisements

1305.502 Authority.

The authority to approve the publication of paid advertisements in newspapers for recruitment of personnel was delegated to personnel managers pursuant to the Department Administrative Order on *Recruitment, Selection and Placement* (DAO 202-330). The authority to approve the publication of paid advertisements in newspapers for other than recruitment of personnel is delegated to the heads of contracting offices.

[49 FR 12959, Mar. 30, 1984]

PART 1306—COMPETITION REQUIREMENTS

Subpart 1306.2—Full and Open Competition After Exclusion of Sources

Sec.

1306.202 Establishing or maintaining alternative sources.

Subpart 1306.3—Other Than Full and Open Competition

1306.303 Justifications.
1306.303-1 Requirements.
1306.304 Approval of the justification.

Subpart 1306.5—Competition Advocates

1306.501 Requirement.

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

SOURCE: 50 FR 19363, May 8, 1985 (interim), and 51 FR 1377, Jan. 13, 1986 (final), unless otherwise noted.

Subpart 1306.2—Full and Open Competition After Exclusion of Sources

1306.202 Establishing or maintaining alternative sources.

(b)(1) Every proposed contract action under the authority of FAR 6.202(a) shall be supported by a determination and findings (D&F) signed by the Head of the Contracting Activity.

Subpart 1306.3—Other Than Full and Open Competition

1306.303 Justifications.

[51 FR 15330, Apr. 23, 1986]

1306.303-1 Requirements.

(d) Where the authority or FAR 6.302-3(a)(2)(i) or FAR 6.302-7 is cited as a basis for not providing full and open competition for any contract action subject to the Agreement on Government Procurement, the contracting officer shall send a copy of the justification to the Procurement Executive within 14 work days after contract award. The Procurement Executive shall send the copy of the justification to the Office of the United States Trade Representative.

[51 FR 15330, Apr. 23, 1986]

1306.304 Approval of the justification.

(a) If the action is within his or her delegated authority, the Head of the Contracting Activity may issue class justifications for other than full and open competition for:

(1) Contracts for electric power or energy, gas (natural or manufactured), water, or other utility services when such services are available from only one source;

(2) Contracts under the authority cited in FAR 6.302-4 or 6.302-5; or

(3) Contracts for educational services from nonprofit institutions.

(b) No other class justifications are authorized for other than full and open competition.

best copy available

pages tightly bound

Subpart 1306.5—Competition Advocates

1306.501 Requirement.

The Director of the Office of Procurement Management is designated as the Competition Advocate for the Department. The Head of the Operating Unit shall designate a competition advocate for each contracting activity under his direction. The contracting activity competition advocate shall be designated at a level no lower than the Deputy to the Head of the Contracting Activity.

PART 1307—ACQUISITION PLANNING

Subpart 1307.1—Acquisition Plans

Sec.
1307.103 Agency-head responsibilities.

Subpart 1307.3—Contractor Versus Government Performance

1307.307 Appeals.

Subpart 1307.4—Equipment Lease or Purchase

1307.401 Acquisition considerations.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Source: 49 FR 12959, Mar. 30, 1984, unless otherwise noted.

Subpart 1307.1—Acquisition Plans

1307.103 Agency-head responsibilities.

The Department's procedures for acquisition planning are contained in the Department Administrative Order on the *Procurement Planning System* (DAO 208-15) and the Department Administrative Order on *Management of Automatic Data Processing Resources* (DAO 212-1).

Subpart 1307.3—Contractor Versus Government Performance

1307.307 Appeals.

The Department's appeals procedures of the cost-comparison is contained in the Department Administrative Order on the *Acquisition of Commercial or Industrial Products and Services Needed by the Department of Commerce* (DAO 201-41).

Subpart 1307.4—Equipment Lease or Purchase

1307.401 Acquisition considerations.

The contracting officer shall decide whether to acquire equipment by lease or purchase.

PART 1308—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 1308.1—Excess Personal Property

Sec.
1308.101 Definition.

Subpart 1308.8—Acquisition of Printing and Related Services

1308.802 Policy.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1308.1—Excess Personal Property

1308.101 Definition.

The authority to designate personal property as excess is delegated to the Director of the Office of Property and Building Management or designee.

[49 FR 12959, Mar. 30, 1984]

Subpart 1308.8—Acquisition of Printing and Related Services

1308.802 Policy.

The Director of the Office of Information Services is the central printing authority for liaison with the Joint Committee on Printing and the Public Printer.

[49 FR 12959, Mar. 30, 1984]

PART 1309—CONTRACTOR QUALIFICATIONS

Subpart 1309.1—Responsible Prospective Contractors

1309.106 Preaward surveys.
1309.106–70 Preaward surveys for ship construction, ship alteration, and ship repair.

Subpart 1309.4—Debarment, Suspension and Ineligibility

Sec.

1309.403 Definitions.
1309.470 Procedures for debarment, suspension and ineligibility.
1309.470–1 Scope of section.
1309.470–2 Consolidated list of debarred, suspended, and ineligible contractors.
1309.470–3 Agency records.
1309.470–4 Procedures on debarment.
1309.470–5 Period of debarment.
1309.470–6 Scope of debarment.
1309.470–7 Procedures on suspension.
1309.470–8 Period of suspension.
1309.470–9 Scope of suspension.

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

SOURCE: 49 FR 12960, Mar. 30, 1984, unless otherwise noted.

Subpart 1309.1—Responsible Prospective Contractors

1309.106 Preaward surveys.

[51 FR 15330, Apr. 23, 1986]

1309.106–70 Preaward surveys for ship construction, ship alteration, and ship repair.

(a) *General.* The contracting officer shall request a preaward survey of a prospective contractor for contracts involving ship construction, ship alteration, or ship repair, where the cost or price of the contract is anticipated to be in excess of $100,000, and the information on hand is not sufficient to make a determination regarding responsibility. The contracting officer may request a preaward survey of a prospective contractor for contracts involving ship construction, ship alteration, or ship repair, where the cost or price of the contract is anticipated to be $100,000 or less, if the circumstances justify the cost of the survey.

(b) *Extent of preaward survey.* The contracting officer shall determine the manner and extent of the preaward survey based upon the specific requirements of the contract. At a minimum, the contracting officer shall request a preaward survey for contracts involving ship construction, ship alteration, and ship repair where the contracting officer cannot affirmatively determine that the prospective contractor's facility is adequate for the work to be performed. For the purpose of this section, the prospective contractor's facility includes the land, buildings, shop spaces, dock facilities, drydock or marine railways, and plant security and safety.

(c) *Examples of specific concern.* The contracting officer shall coordinate efforts with technical and requirements personnel to identify areas of specific concern for the preaward survey. The following examples illustrate areas which may be of specific concern to the preaward survey team, depending on the nature of the work to be performed:

(1) Acceptable facilities and equipment for special production techniques (e.g., unique welding procedures, special test fixtures, or production equipment);

(2) Adequate size and lift capacity for the drydock or marine railway;

(3) Well maintained drydock and lifting equipment and acceptable preventative maintenance of these items;

(4) Acceptable dock master and crew who are experienced in operating the equipment and lifting a vessel of comparable size and weight;

(5) Adequate drydock or pier utilities to support the vessel, including electrical power, steam, potable water, fire fighting capability, sewage disposal, and telephone service;

(6) Responsible subcontractors;

(7) Contractor's demonstrated ability to monitor and coordinate subcontractor performance;

(8) Contractor's demonstrated ability to conduct dock and sea trials;

(9) Contractor's demonstrated ability to protect the vessel and yard and vessel personnel, including safety and security programs or individual plans;

(10) Adequate secure storage facilities for Government property; and

(11) The depth of water in the navigable waterway and the pier where the vessel will be berthed.

(d) *Preaward survey team.* The contracting officer may use any of the following individuals to form the preaward survey team:

(1) A cost or price analyst or cognizant audit agency for review of the contractor's financial and accounting systems;

(2) Technical or requirements personnel from the cognizant marine center or office of marine operations, for technical, production, or quality assurance evaluations; and

(3) Representatives of the contracting officer for management and administrative evaluations.

(e) *On-site survey.* If it is necessary to conduct a survey at the proposed site where the work is to be performed, the contracting officer shall coordinate the visit with the prospective contractor or subcontractor.

(f) *Reports.* The surveying team shall comply with the applicable reporting requirements of FAR 9.106-4. When using the short-form preaward survey report prescribed in FAR 9.106-4(d), the surveying team shall provide information on the following at a minimum:

(1) The depth of water in the navigable waterway and the pier where the vessel will be berthed;

(2) The condition of the drydock or marine railway where the work is to be performed;

(3) Availability of adequate utilities and services for the vessel;

(4) Evidence of prospective contractor or subcontractor financial problems or poor past performance.

(g) *Contracting officer determination.* Upon completion of the preaward survey, the contracting officer shall determine whether the prospective contractor and subcontractors are responsible.

[51 FR 15330, Apr. 23, 1986]

Subpart 1309.4—Debarment, Suspension and Ineligibility

1309.403 Definitions.

"Debarring official" means the Procurement Executive.

"Suspension official" means the Procurement Executive.

1309.470 Procedures for debarment, suspension and ineligibility.

1309.470-1 Scope of section.

This section prescribes Department procedures for: (a) Distribution, use and maintenance of GSA's consolidated list of debarred, suspended, and ineligible contractors; and (b) debarment and suspension of Government contractors.

1309.470-2 Consolidated list of debarred, suspended, and ineligible contractors.

The following procedures apply to GSA's consolidated list of debarred, suspended, and ineligible contractors:

(a) The Procurement Executive shall notify GSA of any Department imposed debarments or suspensions of a contractor or any modification or rescission of these actions.

(b) GSA's consolidated list shall be distributed to the Department contracting activities by the Office of Small and Disadvantaged Business Utilization (OSDBU).

(c) Preliminary and ordinary inquiries concerning GSA's consolidated list should be made from the contracting office to the agency or authority which took the action. When unique or complex matters are concerned, the contracting office shall also inform the Office of Procurement and Federal Assistance.

(d) Personnel in all contracting offices should be familiar with GSA's consolidated list and all updates.

1309.470-3 Agency records.

The Office of Small and Disadvantaged Business Utilization (OSDBU) shall maintain records relating to each suspension or debarment action taken by the Department.

1309.470-4 Procedures on debarment.

(a) *Investigation and referral.* Personnel in all contracting offices shall be familiar with the causes for debarment (FAR 9.406-2) and shall be alert to information which indicates that a contractor (to which the Department plans to award a contract) has committed an action which is a cause for debarment. If a contractor not on the list has committed an action which is a cause for debarment, heads of contracting offices shall determine which other agencies award contracts to this firm and if any of these agencies have initiated, or plan to initiate debarment actions.

(1) If another agency is considering debarment, the Head of the Contracting Activity shall promptly report this fact and recommend action to the Procurement Executive after discussions with general counsel. Within 30 days after receipt of notice, the Procurement Executive shall decide whether it is necessary for the Department to proceed with a debarment action.

(2) If another agency is not considering debarment, the Head of the Contracting Activity shall promptly report this fact and recommend action to the Procurement Executive after discussions with general counsel. The Head of the Contracting Activity shall attach all available documenting evidence to support the recommendation. The mere existence of a cause for debarment does not require that a contractor be debarred. The seriousness of the contractor's acts or omissions and any mitigating factors shall be considered in recommendations for action and any debarment decision.

(b) *Decision making process.* Upon receipt of a debarment recommendation, the Procurement Executive shall review all available evidence and shall promptly determine whether or not to proceed with debarment. The Procurement Executive may refer the matter to the Office of Inspector General for further investigation. After completion of any additional review or investigations, the Procurement Executive shall make a written determination. A copy of this determination shall be promptly sent to the initiating contracting office. (See FAR 9.406-3(b).)

(c) Notice of proposal to debar. (See FAR 9.406-3(c).)

(d) Debarring official's decision. (See FAR 9.406-3(d).)

(e) Notice of debarring official's decision. (See FAR 9.406-3(e).)

1309.470-5 Period of debarment.

(See FAR 9.406-4.)

1309.470-6 Scope of debarment.

(See FAR 9.406-5.)

1309.470-7 Procedures on suspension.

(a) *Investigation and referral.* Heads of contracting offices may recommend suspension of a firm or individual based on the causes for suspension listed in FAR 9.407-2. The procedures for investigation and referral of suspension are the same as those contained in 1309.470-4(a). When using that subsection for suspension procedures, substitute the word "suspension" for the word "debarment".

(b) *Decision making process.* Procedures for the decision making process of suspensions are the same as those contained in 1309.470-4(b) except that an initial decision by the Procurement Executive regarding debarment results in a proposal to debar, whereas the initial decision for suspension results in immediate suspension. (See FAR 9.407-3(b).)

(c) Notice of suspension. (See FAR 9.407-3(c).)

(d) Suspending official's decision. (See FAR 9.407-3(d).)

1309.470-8 Period of suspension.

(See FAR 9.407-4.)

1309.470-9 Scope of suspension.

(See FAR 9.407-5.)

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1313—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1313.1—General

1313.106-70 Technical evaluation and written or oral discussion procedure for negotiated small purchases.

(a) *Technical evaluation.* A technical evaluation may be requested for negotiated small purchases, at the discretion of the contracting officer. The manner and extent of the technical evaluation shall be determined by the contracting officer, except that the technical evaluation shall not be as formal or as extensive as required for procurements above the small purchase dollar threshold.

(b) *Written or oral discussions.* Written or oral discussions may be conducted with all qualified sources which submit quotations for negotiated small purchases. The contracting officer shall determine the manner, extent, and need for written or oral discussions, except that discussions shall not be as formal or as extensive as required for procurements above the small purchase dollar threshold.

[49 FR 12961, Mar. 30, 1984]

PART 1314—SEALED BIDDING

Subpart 1314.4—Opening of Bids and Award of Contract

Sec.
1314.401-1 Cancellation of invitations after opening.
1314.406-3 Other mistakes disclosed before award.

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1314.4—Opening of Bids and Award of Contract

1314.401-1 Cancellation of invitations after opening.

The head of the contracting office has been delegated the authority to make the determination under FAR 14.404-1 (c) and (e).

[50 FR 19364, May 8, 1985, and 51 FR 1377, Jan. 13, 1986].

1314.406-3 Other mistakes disclosed before award.

(e) The authority to make the determinations listed in FAR 14.406-3(e) concerning mistakes in bids was delegated to the Heads of Contracting Activities.

[49 FR 12961, Mar. 30, 1984]

PART 1315—CONTRACTING BY NEGOTIATION

Subpart 1315.4—Solicitation and Receipt of Proposals and Quotations

Sec.
1315.413-2 Alternate II.

Subpart 1315.5—Unsolicited Proposals

1315.501 Definitions.
1315.504 Advance guidance.
1315.506 Agency procedures.

Subpart 1315.6—Source Selection

1315.608 Proposal evaluation.
1315.612 Formal source selection.

Subpart 1315.8—Price Negotiation

1315.804-3 Exemptions from or waiver of submission of certified cost or pricing data.
1315.805-70 Audit as an aid in proposal analysis.

Subpart 1315.9—Profit

1315.902 Policy.

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended

(40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

SOURCE: 49 FR 12961, Mar. 30, 1984, unless otherwise noted.

Subpart 1315.4—Solicitation and Receipt of Proposals and Quotations

1315.413-2 Alternate II.

The procedures described in FAR 15.413-2 may be used if approved by the Head of the Contracting Activity or designee.

Subpart 1315.5—Unsolicited Proposals

1315.501 Definitions.

"Coordinating office" means the head of the contracting office.

1315.504 Advance guidance.

(a) Department employees should encourage inquiries on Department missions, needs and methods of operation and refer inquiries to the program office concerned with the subject matter of the inquiry. Any inquiry which could reasonably lead to a procurement action should be promptly coordinated with the appropriate head of the contracting office.

(b) When it appears that a person or firm is interested in making a proposal, that person or firm should be referred to the head of the contracting office concerned who will provide instructions for submission of an unsolicited proposal.

(c) Heads of contracting offices shall provide instructions for submission of unsolicited proposals to each person or firm which expresses an interest in submitting an unsolicited proposal.

1315.506 Agency procedures.

(a) The head of the contracting office is the contact point to coordinate the receipt and handling of unsolicited proposals.

(b) The head of the contracting office shall promptly acknowledge receipt of unsolicited proposals by letter.

(c) The head of the contracting office shall comply with FAR 15.509 concerning the limited use of data.

(d) Promptly after receipt of an unsolicited proposal which conforms to this regulation, the head of the contracting office shall forward a copy of the proposal along with instructions for technical evaluation of unsolicited proposals to the appropriate program office for technical evaluation. If more than one Department activity has an interest in a proposal, copies of the proposal shall be circulated to each interested office.

(e) Program offices receiving unsolicited proposals for evaluation shall conduct the evaluation in accordance with this Subpart 1315.5, FAR Subpart 15.5, and any additional guidance provided by the Office of Procurement and Federal Assistance.

(f) Program offices shall complete the recommendation and evaluations and submit them along with all copies of the unsolicited proposal, and a written justification for a noncompetitive procurement action if appropriate, to the head of the appropriate contracting office within 60 days of receipt of a proposal for evaluation.

(g) No part of an unsolicited proposal shall be duplicated or circulated outside of the evaluation office. Each unsolicited proposal shall be closely safeguarded to prevent disclosure of any restricted data. Only heads of contracting offices or their designees may duplicate unsolicited proposals and then only to facilitate evaluation by more than one technical evaluation office.

Subpart 1315.6—Source Selection

1315.608 Proposal evaluation.

The head of the contracting office has been delegated the authority to make the determination under FAR 15.608(b).

[50 FR 19364, May 8, 1985, and 51 FR 1377, Jan. 13, 1986]

1315.612 Formal source selection.

(e) *Safeguarding information.* The contracting officer is designated as the releasing authority for source selection information.

Subpart 1315.8—Price Negotiation

1315.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(i) *Waiver for exceptional cases.* The head of the contracting office is delegated the authority to waive the requirement for submission of certified cost or pricing data in exceptional cases.

1315.805-70 Audit as an aid in proposal analysis.

(a) Preaward audit services include:

(1) The submission of an auditor's report which sets forth the results of review and analysis of cost data submitted by contractors as part of their pricing proposals, reviews of contractors' accounting systems, recorded contract costs, and other related matters; and

(2) Personal consultation and advice regarding the use of the auditor's report in the negotiation and award of a contract.

(b) Requests for audit services should be sent to the External Audit Division, Office of Inspector General, Herbert C. Hoover Building.

(c) Preaward audits should not be routinely requested for actions below the dollar threshold specified in FAR 15.805-5. Before requesting audits below the dollar threshold, the contracting office should consider using price or cost analysis techniques, recent audit reports, price negotiation memoranda, and other relevant information regarding the offer to establish the reasonableness of price. However, audits should be considered for proposals below the specified dollar thresholds in the following circumstances:

(1) The contracting officer has reason to doubt the adequacy of the contractor's accounting policies or cost systems;

(2) The contractor has substantially changed its methods or levels of operation;

(3) Previous unfavorable experience indicates that the contractor's estimating, accounting, or purchasing methods may be unreliable; or

(4) The proposal concerns a new product for which cost experience is lacking.

Subpart 1315.9—Profit

1315.902 Policy.

(a) Except as provided in (b) and (c) of this section, a structured approach for determining profit or fee prenegotiation objectives shall be used in the negotiation of all contracts, subcontracts, and contract modifications above $100,000 where adequate price competition does not exist. A structured approach for determining profit or fee prenegotiation objectives may be used at lower dollar thresholds.

(b) Regardless of whether price competition exists, the structured approach for determining profit or fee prenegotiation objectives is not required for negotiation of contracts, subcontracts, and contract modifications for the following:

(1) Architect—engineering contracts;

(2) Management contracts for operation or maintenance of Government facilities;

(3) Construction contracts;

(4) Contracts primarily requiring delivery of material supplied by subcontractors;

(5) Termination settlements;

(6) Cost-plus-award-fee contracts; and

(7) Unusual pricing situations where the structured approach has been determined to be unsuitable. This exception must be justified in writing and signed by the head of the contracting office.

(c) In many circumstances, an examination of cost and profits is not required. Where adequate price competition exists and in other situations where cost analysis is not required (e.g., established catalog or market prices of commercial items sold in substantial quantities to the general public or prices set by law or regulation), contracts may be awarded without regard to the amount of profit involved.

(d) Additional internal instruction on the use of the structured approach can be found in Procurement Letters or policy manuals issued by the Office of Procurement and Federal Assistance.

PART 1316—TYPES OF CONTRACTS

Subpart 1316.3—Cost-Reimbursement Contracts

Sec.
1316.306 Cost-plus-fixed-fee contracts.

Subpart 1316.4—Incentive Contracts

1316.404-2 Cost-plus-award-fee contracts.

Subpart 1316.6—Time-and-Materials, Labor-Hour and Letter Contracts

1316.603-3 Limitations.

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

SOURCE: 49 FR 12962, Mar. 30, 1984, unless otherwise noted.

Subpart 1316.3—Cost-Reimbursement Contracts

1316.306 Cost-plus-fixed-fee contracts.

The contracting officer is delegated the authority to sign a determination and findings establishing the basis for application of the statutory fee limitation.

Subpart 1316.4—Incentive Contracts

1316.404-2 Cost-plus-award-fee contracts.

(d) *Fee determination plans.* The award fee determination plan shall include both technical performance (including scheduling as appropriate) and business management consideration tailored to the needs of the particular situation. The goals and evaluation criteria should be results-oriented. The award fee should concentrate on the end product of the contract. However, equal employment opportunity, small business programs, and functional management areas, such as safety and security, cannot be disregarded and may be appropriately part of the criteria upon which to base the award fee. Specific goals or objectives should be established in relation to each performance evaluation criterion against which contractor performance is measured.

Subpart 1316.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1316.603-3 Limitations.

The head of the contracting office is the designated official for executing a determination and findings that no contract other than a letter contract is suitable.

PART 1317—SPECIAL CONTRACTING METHODS

Subpart 1317.4—Leader Company Contracting

Sec.
1317.402 Limitations.

Subpart 1317.5—Interagency Acquisitions Under the Economy Act

1317.502 General.

Subpart 1317.70—Contracts for Ship Construction, Ship Alteration, and Ship Repair

1317.7001 Solicitation provisions and contract clauses.

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1317.4—Leader Company Contracting

1317.402 Limitations.

Leader company contracting is authorized by the Department only when approved in writing by the Procurement Executive.

[49 FR 12965, Mar. 30, 1984]

Subpart 1317.5—Interagency Acquisitions Under the Economy Act

1317.502 General.

The head of the contracting office is delegated the authority to determine if it is in the Government's interest to place orders for supplies or services with another agency.

[49 FR 12963, Mar. 30, 1984]

Subpart 1317.70—Contracts for Ship Construction, Ship Alteration, and Ship Repair

1317.7001 Solicitation provisions and contract clauses.

(a)(1) The contracting officer shall insert the following clauses in sealed bid fixed-price solicitations and contracts for ship construction, ship alteration, and ship repair.

(i) Inspection and Manner of Doing Work, 1352.217-90.

(ii) Delivery of the Vessel to the Contractor, 1352.217-91.

(iii) Performance, 1352.217-92.

(iv) Delays, 1352.217-93.

(v) Minimization of Delay Due to Government Furnished Property, 1352.217-94.

(vi) Additional Provisions Relating to Government Property, 1352.217-95.

(vii) Liability and Insurance, 1352.217-96.

(viii) Title, 1352.217-97.

(ix) Discharge of Liens, 1352.217-98.

(x) Department of Labor Occupational Safety and Health Standards for Ship Repairing, 1352.217-99.

(xi) Regulations Governing Asbestos Work, 1352.217-100.

(xii) Complete and Final Equitable Adjustments, 1352.217-101.

(xiii) Government Review, Comment, Acceptance, and Approval, 1352.217-102.

(xiv) Access to the Vessel, 1352.217-103.

(xv) Documentation of Requests for Equitable Adjustment, 1352.217-104.

(xvi) Change Proposals, 1352.217-105.

(xvii) Lay Days, 1352.217-106.

(xviii) Changes—Ship Repair, 1352.217-107.

(xix) Default—Ship Repair, 1352.217-108.

(2) Unless inappropriate due to contract type, the contracting officer shall insert the clauses listed above in negotiated solicitations and contracts for ship construction, ship alteration, and ship repair.

(b) The contracting officer shall insert a clause substantially the same as the clause at 1352.217-109, Insurance Requirements, in solicitations and contracts for ship construction, ship alteration, and ship repair, unless the contracting officer determines that the contract, or job order, requires work on parts of a vessel only and the work is to be performed at a plant other than the site of the vessel.

(c) The contracting officer shall insert the clause at 1352.217-110, Guarantees, unless the contracting officer determines that its use would be inappropriate under the circumstances.

(d) The contracting officer shall insert the clause at 1352.217-111, Temporary Services, in solicitations and contracts for ship construction, ship alteration, and ship repair, unless the contracting officer determines that its use would be inappropriate under the circumstances.

(e) The contracting officer shall insert the provision at 1352.217-112, Self-Insurance Information, in solicitations and contracts for ship construction, ship alteration, and ship repair, when the contracting officer determines that it is appropriate to allow offerors the opportunity to self-insure for any or all of the risks set forth in the applicable insurance clauses of the contract.

[52 FR 3807, Feb. 6, 1987]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1319—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 1319.2—Policies

Sec.
1319.201 General policy.
1319.202-2 Locating small business sources.

Subpart 1319.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

1319.705-5 Awards involving subcontracting plans.

1319.70—Contracting Opportunities for Women-Owned Small Businesses

1319.7001 Policy.
1319.7002 Source identification and solicitation.
1319.7003 Subcontracting opportunities.

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1319.2—Policies

1319.201 General policy.

(c) The Director of the Office of Small And Disadvantaged Business Utilization (OSDBU) is responsible for administering the Department's small and small disadvantaged business programs.

(d) The Head of the Contracting Activity or designee shall appoint a small business and disadvantaged business specialist for the contracting activity concerned.

[49 FR 12963, Mar. 30, 1984]

1319.202-2 Locating small business sources.

(b) The contracting officer shall send a copy of the requisition form for all procurement actions expected to exceed $500,000 ($1,000,000 for construction) to the Office of Small and Disadvantaged Business Utilization, as promptly after receipt as possible. The Office of Small and Disadvantaged Business Utilization shall review the procurement actions and recommend action to the contracting officer. Orders under GSA schedule contracts, orders under Department or Government-wide indefinite delivery contracts, or actions within the scope of the changes, value engineering, or similar contract clauses are exempt from the requirements of this subsection.

[50 FR 19364, May 8, 1985, and 51 FR 1377, Jan. 13, 1986]

Subpart 1319.7—Subcontracting With Small Business and Small Disadvantage Business Concerns

1319.705-5 Awards involving subcontracting plans.

Prior to making an award that requires a subcontracting plan, the contracting officer shall forward the proposed contract (including the plan and supporting documentation) to the Director of the Office of Small and Disadvantaged Business Utilization (OSDBU) to allow that office to review the material and submit advisory recommendations to the contracting officer. The contracting officer shall send the material to the following address:

Director, Office of Small and Disadvantage Business Utilization, U.S. Department of Commerce, Herbert C. Hoover Building, Room H6411, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

The Director of the OSDBU will notify the Small Business Administration procurement center representative of the opportunity to review the proposed contract (including the plan and supporting documentation), to allow that representative an opportunity to participate in any advisory recommendations to be submitted to the contracting officer. The Director of the OSDBU shall return the material and any recommendations to the contracting officer within 5 working days after the material is received by OSDBU, providing all pertinent documents have been received by the OSDBU.

[50 FR 19364, May 8, 1985, and 51 FR 1377, Jan. 13, 1986]

Subpart 1319.70—Contracting Opportunities for Women-Owned Small Businesses

SOURCE: 51 FR 15331, Apr. 23, 1986, unless otherwise noted.

1319.7001 Policy.

The Department encourages the use of women-owned small businesses in its acquisition programs. Whenever practicable, Department contracting activities shall include women-owned small businesses in competitive solicitations and assist prime contractors in identifying women-owned small businesses for subcontracting opportunities.

1319.7002 Source identification and solicitation.

(a) The contracting officer shall include women-owned small businesses on the mailing list for each solicitation which is expected to result in an award in excess of the small purchase dollar threshold whenever there are women-owned small businesses known to be potential suppliers.

(b) The contracting officer should contact the Office of Small and Disadvantaged Business Utilization (OSDBU) for assistance in locating these sources through the Small Business Administration Procurement Automated Source System (PASS) and the Minority Vendor Profile System (MVPS). The contracting officer should also encourage technical and requirements personnel to identify women-owned small business sources.

1319.7003 Subcontracting opportunities.

(a) Contracting officers shall provide assistance to prime contractors to identify potential women-owned small businesses. Such assistance is intended to aid prime contractors in placing a fair proportion of subcontracts with women-owned small businesses.

(b) The contracting officer shall insert the clause at 1352.219-1, Women-Owned Small Business Sources, in solicitations and contracts where the clause prescribed by FAR 19.708(b) is required (see FAR 52.219-9).

PART 1322—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1322.1—Basic Labor Policies

Sec.
1322.103-4 Approvals.

Subpart 1322.6—Walsh-Healey Public Contracts Act

1322.608-4 Award pending final determination.

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1322.1—Basic Labor Policies

1322.103-4 Approvals.

The contracting officer is the designated official for approving the total dollar amount and use of overtime for contract performance.

[49 FR 12963, Mar. 30, 1984]

Subpart 1322.6—Walsh-Healey Public Contracts Act

1322.608-4 Award pending final determination.

If the contracting officer determines that award must be made before a determination of the offeror's eligibility as a manufacturer or regular dealer by DOL or SBA, that decision must be approved by the head of the contracting office.

[49 FR 12963, Mar. 30, 1984]

PART 1324—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1324.1—Protection of Individual Privacy

Sec.
1324.103 Procedures.

Subpart 1324.2—Freedom of Information Act

1324.202 Policy.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1324.1—Protection of Individual Privacy

1324.103 Procedures.

(b)(2) The Department's procedures for implementing the Privacy Act are contained in 15 CFR Commerce and Foreign Trade, Subtitle A, Part 4b (Privacy Act) and the Department Administrative Order on *Implementing the Privacy Act of 1974* (DAO 205-15).

[49 FR 12963, Mar. 30, 1984]

Subpart 1324.2—Freedom of Information Act

1324.202 Policy.

The Department's procedures for implementing the Freedom of Information Act (the Act) are contained in 15 CFR Commerce and Foreign Trade, Subtitle A, Part 4 (Public Information) and the Department Administrative Order on *Public Information* (DAO 205-12).

[49 FR 12963, Mar. 30, 1984]

PART 1325—FOREIGN ACQUISITION

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486 (c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1325.1—Buy American Act-Supplies

1325.102 Policy.

(a)(4) The contracting officer is authorized to make the written determination described by FAR 25.102(a)(4). If the contract is estimated to exceed $1 million, the Head of the Contracting Activity must approve the determination.

[49 FR 12963, Mar. 30, 1984]

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1331—CONTRACT COST PRINCIPLES AND PROCEDURES

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1331.2—Contracts With Commercial Organizations

1331.205-32 Precontract costs.

The payment of precontract costs must be approved in writing by the head of the contracting office.

[50 FR 19364, May 8, 1985, and 51 FR 1377, Jan. 13, 1986]

PART 1332—CONTRACT FINANCING

Subpart 1332.1—General

Sec.
1332.102 Description of contract financing methods.

Subpart 1332.4—Advance Payments

1332.402 General.

Subpart 1332.6—Contract Debts

1332.605 Responsibilities and cooperation among Government officials.
1332.616 Compromise actions.

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

SOURCE: 49 FR 12963, Mar. 30, 1984, unless otherwise noted.

Subpart 1332.1—General

1332.102 Description of contract financing methods.

(e)(2) Progress payments based on a percentage or stage of completion are authorized for use as a payment method under Department contracts and subcontracts for construction, alteration, repair, ship construction, ship alteration, and ship repair. For all other contracts, progress payments shall be based on costs except when the head of the contracting office determines that progress payments based on costs cannot be practically employed. In those cases, progress payments based on a percentage or stage of completion may be authorized when the head of the contracting office also determines that adequate safeguards are provided for the administration of those payments.

Subpart 1332.4—Advance Payments

1332.402 General.

(e)(1) The Head of the Contracting Activity is delegated the authority to make findings and determinations and to approve contract terms concerning any advance payments, regardless of dollar amount.

(2) Before authorizing advance payments, the Head of the Contracting Activity shall coordinate with the servicing finance office.

Subpart 1332.6—Contract Debts

1332.605 Responsibilities and cooperation among Government officials.

(b) The contracting officer has primary responsibility for determining the amount of contract debt and notifying the servicing finance office of the debt due to the Government. The servicing finance office has primary responsibility for debt collection and reporting of all contract debts under the Debt Collection Act of 1982.

1332.616 Compromise actions.

The Department's policy on compromise actions is contained in the Department Administrative Order on *Collection and Other Disposition of Claims of the United States* (DAO 203-23).

PART 1333—PROTESTS, DISPUTES, AND APPEALS

Subpart 1333.1—Protests

Sec.
1333.102 General.
1333.103 Protests to the agency.
1333.104 Protests to GAO.
1333.105 Protests to GSBCA.
1333.106 Solicitation provision and contract clause.

Subpart 1333.2—Disputes and Appeals

1333.209 Suspected fraudulent claims.
1333.213 Obligation to continue performance.

Subpart 1333.70—Department Board of Contract Appeals

1333.70-1 Department Board of Contract Appeals.

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

SOURCE: 51 FR 15331, Apr. 23, 1986, unless otherwise noted.

Subpart 1333.1—Protests

1333.102 General.

The Departmentwide contact point for protests to the GAO or to the GSBCA is the Assistant General Counsel for Finance and Litigation (AGC). The AGC represents the Department in protests filed with the GAO or the GSBCA. The AGC furnishes all necessary correspondence concerning protests to the GAO or the GSBCA, including the Department's report in response to a GAO or GSBCA protest.

1333.103 Protests to the agency.

(a) Protests must be received within ten work days after the basis for protest is known or should have been known unless good cause is shown to extend the time limit. However, protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing time for receipt of initial proposals shall be filed prior to bid opening or the closing time for receipt of initial proposals. Unless the time limit for receiving the protest is extended for good cause, a protest to the contracting activity which is received after the time limit will not be considered. When a timely protest is filed only with the contracting activity, the contracting officer shall take prompt action towards resolution after consulting with the AGC, and notify the protestor in writing of the action taken.

(b) When a protest is filed only with the contracting activity before award, an award shall not be made until the matter is resolved unless the head of the contracting office makes the determination prescribed in FAR 33.103(a).

(c) When a protest is filed only with the contracting activity after award, the contracting officer need not notify the contractor if the protest can be promptly resolved. If it appears likely that the award may be invalidated or that a protest will be filed with the GAO or the GSBCA, the contracting officer should promptly notify the contractor in writing and consider suspending contract performance.

1333.104 Protests to GAO.

(a)(1) *General.* A protestor shall furnish a copy of its complete protest to the contracting officer designated in the solicitation and a copy of its complete protest to the Contract Law Division of the Office of the Assistant General Counsel for Finance and Litigation, no later than one day after the protest is filed with the GAO. The envelope containing the complete protest shall be clearly marked "GAO Protest".

(2) The GAO report shall be assembled and organized by the contracting office in accordance with rule 4(d) of the GSBCA Rules of Procedure (48 CFR Part 6101) except where rule 4(d) may conflict with GAO procedures.

(3) The contracting officer shall give the notice required in FAR 33.104(a)(3) (GAO 4 CFR 21.3).

(4)(i) The contracting officer shall submit a draft index of the GAO report to the Contract Law Division of the Office of the Assistant General Counsel for Finance and Litigation so that it is received within 10 work days after the contracting officer receives telephonic notice of the protest from the Contract Law Division.

(ii) The contracting officer shall submit the GAO report described in FAR 33.104(a)(2) to the Contract Law Division so that it is received within 13 work days after the contracting officer receives telephonic notice of the protest from GAO, or from the Contract Law Division, whichever notice is sooner. The GAO report shall be submitted with the appropriate number of copies for GAO, the AGC, the protestor, and all interested parties. The AGC will supplement the protest file with legal arguments to support the contracting officer's position and will submit the complete report to GAO and all interested parties within the time established by GAO.

(iii) The contracting officer shall submit a draft index of the GAO report to the Contract Law Division so that it is received within 4 work days after the contracting officer receives telephonic notice of a GAO determination to use the express option.

(iv) The contracting officer shall submit the GAO report to the Contract Law Division so that it is received within 6 work days after the contracting officer receives telephonic notice of a GAO determination to use the express option.

(b) *Protests before award.* When the contracting activity has received notice of a protest filed directly with GAO, a contract may not be awarded prior to a GAO decision on the protest, unless the Head of the Contracting Activity makes the written finding prescribed in FAR 33.104 (b)(1) after consulting with the AGC. The head of the contracting office shall notify the AGC when the written finding has been executed so that the AGC can notify GAO. The contracting activity is not authorized to award the affected contract until the AGC has notified GAO of the written finding.

(c) *Protests after award.* When the contracting activity receives notice of a protest filed directly with GAO within 10 calendar days after contract award, the contracting officer shall immediately suspend performance pending a GAO decision on the protest or terminate the awarded contract, unless the Head of the Contracting Activity makes the written finding prescribed in FAR 33.104 (c)(2) after consulting with the AGC. The head of the contracting office shall notify the AGC when the written finding has been executed so that the AGC can notify GAO. The contracting activity is not authorized to continue contract performance until the AGC has notified GAO of the written finding.

(f) *Notice to GAO.* The Head of the Contracting Activity shall report to the Comptroller General within 60 days of receipt of the GAO's recommendation if the contracting activity has decided not to comply with the recommendation. The Head of the Contracting Activity shall consult with, and send a draft report to, the Procurement Executive and the AGC prior to sending the report to the Comptroller General.

1333.105 Protests to GSBCA.

(a)(1) A protestor shall furnish a copy of its complete protest to the contracting officer designated in the solicitation and a copy of its complete protest to the Contract Law Division of the Office of the Assistant General Counsel for Finance and Litigation, on the same day the protest is filed with the GSBCA. The envelope containing the complete protest shall be clearly marked "GSBCA Protest".

(2) The contracting officer shall give the notice required in FAR 33.105(a)(2) (GSBCA Rule 5d, 48 CFR Part 6101).

(b)(1) The GSBCA protest file shall be assembled and organized by the contracting office in accordance with rule 4(d) of the GSBCA Rules of Procedure (48 CFR Part 6101).

(2) The contracting officer shall submit a draft index of the GSBCA protest file to the Contract Law Division so that it is received within 5 works days after the protest is filed with the GSBCA.

(3) The contracting officer shall submit the GSBCA protest file described in FAR 33.105 (b) and (c) (GSBCA Rule 4, 48 CFR Part 6102) to the Contract Law Division so that it is received within 8 work days after the

protest is filed with the GSBCA. The protest file shall be submitted with the appropriate number of copies for GSBCA, the AGC, the protestor, and all interested parties. The AGC will supplement the protest file with legal arguments to support the contracting officer's position and will submit the complete protest file to GSBCA and all interested parties within the time established by GSBCA.

(d) If suspension of procurement authority was requested, but not considered appropriate due to the circumstances in FAR 33.105(d)(1), the Head of the Contracting Activity shall execute the determination and findings prescribed by FAR 33.105 after consulting with the AGC, so that the GSBCA may decide the issue.

1333.106 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 1352.233-2, Service of Protest (JAN 1985) (Deviation FAR 52.233-2), in lieu of the provision at FAR 52.233-2 in solicitations for other than small purchases.

Subpart 1333.2—Disputes and Appeals

1333.209 Suspected fraudulent claims.

The contracting officer shall report suspected fraudulent claims or misrepresentations of fact to the Office of Inspector General in accordance with the Department Administrative Order on Inspector General Investigations (DAO 207-10).

1333.213 Obligation to continue performance.

(a) The contracting officer may use Alternate I to the clause at FAR 52.233-1, Disputes, only after the Head of the Contracting Activity has determined in writing that—

(1) Continued performance is necessary pending resolution of any claim arising under or relating to the contract because of unusual circumstances which make continued performance essential to the public health or welfare;

(2) Financing is or will be available for the continued performance; and

(3) The Government's interest is or will be properly secured.

Subpart 1333.70—Department Board of Contract Appeals

1333.70-1 Department Board of Contract Appeals.

The General Services Administration (GSA) Board of Contract Appeals serves as the Board of Contract Appeals for the Department.

[49 FR 12964, Mar. 30, 1984]

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 1334—MAJOR SYSTEM ACQUISITION

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

1334.003 Responsibilities.

(a) The Department's policy, procedures and responsibilites for implementing OMB Circular A-109 are contained in the Department Administrative Order on *Major System Acquisitions for the Department of Commerce* (DAO 208-3).

(b) When the Secretary approves a mission need, the Acquisition Executive shall designate the servicing contracting office for all phases of the major systems acquisitions.

(c) Within 60 days after identification of the servicing contracting office, the program manager shall complete and submit the overall acquisition plan to the Acquisition Executive for approval. The servicing contracting office shall assist in developing the overall acquisition plan. The overall acquisition plan shall include for each of the major systems acquisition phases (i.e., exploration of alternative systems, competitive demonstrations, full-scale development and production) a schedule for completion of at least each of the following functions:

(1) Solicitation development in terms of mission need;

(2) Advance publicity for the initial, exploration phase;

(3) Issuance of requests for proposals (RFPs)

(4) Closing dates for RFPs; and

(5) Evaluation and award.

(d) The program manager shall submit all changes in the overall acquisition plan to the Acquisition Executive along with a written explanation of the need for each change. (See 1307.1 for acquisition planning, in general).

[49 FR 12964, Mar. 30, 1984]

PART 1336—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1336.2—Special Aspects of Contracting for Construction

Sec.
1336.209 Construction contracts with architect-engineer firms.

Subpart 1336.6—Architect-Engineer Services

1336.602-4 Selection authority.
1336.602-5 Short selection processes for contracts not to exceed $10,000.
1336.603 Collecting data on and appraising firms' qualifications.

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

SOURCE: 49 FR 12964, Mar. 30, 1984, unless otherwise noted.

Subpart 1336.2—Special Aspects of Contracting for Construction

1336.209 Construction contracts with architect-engineer firms.

The head of the contracting office is delegated the authority to approve the exceptional circumstance of awarding a contract for construction of a project to the firm that designed the project. Any approval of this type of award must be justified in writing and signed by the head of the contracting office.

Subpart 1336.6—Architect-Engineer Services

1336.602-4 Selection authority.

(a) The Head of the Contracting Activity is the designated selection authority for architect-engineer service contracts over the small purchase dollar threshold.

1336.602-5 Short selection processes for contracts not to exceed $10,000.

Both short selection processes prescribed in FAR 36.602-5 may be used for contracts not to exceed $10,000. However, in either case the contracting officer shall review the report, approve it and commence negotiations or return it for appropriate revision.

1336.603 Collecting data on and appraising firms' qualifications.

(a) *Establishing offices.* The Office of Small and Disadvantaged Business Utilization (OSDBU) is responsible for Department-wide receipt and maintenance of data on firms wishing to be considered for architect-engineer service contracts.

PART 1337—SERVICE CONTRACTING

Subpart 1337.2—Consulting Services

Sec.
1337.202 General.
1337.205 Management controls.

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1337.2—Consulting Services

1337.202 General.

The Department's contracts for consulting and related services are governed by FAR 37.2.

[49 FR 12965, Mar. 30, 1984]

1337.205 Management controls.

(b) The Department's management controls for acquisition of consulting and related services are contained in the Department Administrative Order on *Approval of Advisory and Assistance Services* (DAO 216-13).

[50 FR 19364, May 8, 1985, and 51 FR 1377, Jan. 13, 1986]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1342—CONTRACT ADMINISTRATION

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1342.1—Interagency Contract Administration and Audit Services

1342.102-70 Post award audit reviews.

(a) Generally, the final invoice shall not be approved until a close-out audit has been performed and all outstanding issues have been negotiated or resolved on the following types of contracts of $100,000 and above:

(1) Cost-reimbursement type contracts;

(2) The cost-reimbursement portion of fixed-price contracts;

(3) Letter contracts which provide for reimbursement of costs;

(4) Time and materials contracts; and

(5) Labor-hour contracts.

(b) Even though the $100,000 postaward audit threshold generally applies, an audit may be requested regardless of the dollar amount when the contracting officer determines that an audit is justified under one of the following circumstances:

(1) There is some evidence of fraud or waste;

(2) The contractor's performance under the contract has been questionable;

(3) The contractor had a high incidence of unallowable costs under a previous contract;

(4) The contract is with a newly established firm, or a firm which has just begun dealing with the Government.

(c) All requests for audit services and all relevant documents shall be sent to the address listed in 1315.805-70(b). To ensure receipt and planned action on audit requests, all requests should include a request for confirmation of receipt of the request and the date planned for delivery of the audit report.

(d) See the Department's *Model Procedures for Closeout of Completed Contracts* for further information on audits, including desk audits for contracts of less than $100,000, and waiver of the need for post award audits.

[49 FR 12965, Mar. 30, 1984]

PART 1345—GOVERNMENT PROPERTY

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1345.1—General

1345.102 Policy.

The Department's policy and procedures on government property are contained in the *Property Management Policy Manual*, the *Property Management Procedure Handbook*, and the Department Administrative Order on *Property Management* (DAO 208-17).

[49 FR 12965, Mar. 30, 1984]

PART 1349—TERMINATION OF CONTRACTS

Sec.
1349.001 Definitions.

Subpart 1349.4—Termination for Default

1349.402-7 Other damages.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Sec'y of Commerce in Dept. Org. Order 10-5 and Dept. Adm. Order 208-2.

1349.001 Definitions.

(a) "Administrative costs", as used in this part, means those costs other than excess costs, incurred by the Government as a result of the contractor's default. Administrative costs include but are not limited to:

(1) Salaries and fringe benefits paid to Government employees who are assigned to a work activity (e.g., reprocurement activities) as a result of the default;

(2) Preaward survey expenses incurred in qualifying reprocurement contractors; and

(3) Costs incurred in printing and distributing the reprocurement solicitation.

(b) "Excess costs", as used in this part, means any costs, other than administrative costs, incurred by the Government in reprocuring similar supplies or services or performing similar services as a result of the contractor's default.

[51 FR 15332, Apr. 23, 1986]

Subpart 1349.4—Termination for Default

1349.402-7 Other damages.

(a) The contracting officer may recover administrative costs under the default clause when it is in the best interest of the Government. A contracting officer's decision to recover administrative costs must balance the expected cost to the Government of documenting and supporting the assessment with the expected recovery amount.

(b) Documents used to support an assessment of administrative costs must clearly demonstrate that the added costs incurred by the Government were a direct result of the default.

(1) To support administrative labor costs, the contracting officer should keep a record of:

(i) Name, position, and organization of each employee performing work activities as a consequence of the default;

(ii) Dates of work and time spent by each employee on the repurchase;

(iii) Specific tasks performed (e.g., solicitation preparation, clerical);

(iv) Hourly rates of pay (straight time or overtime); and

(v) Applicable fringe benefits.

(2) Travel vouchers, invoices, printing requisitions, and other appropriate evidence of expenditures may be used to support other administrative costs (e.g., travel, per diem, printing and distribution of the repurchase contract).

(c) If assessment of administrative costs is considered appropriate after review by the AGC, the contracting officer shall make a written demand on the contractor for administrative costs. The written demand shall describe the basis for the assessment and the cost computations. The same demand letter may be used to assess administrative costs and any excess costs. If the contractor fails to make payment after receiving a contracting officer's final decision, the contracting officer shall follow the procedures in Subpart 1332.6 and FAR Subpart 32.6 to collect the amount owed the Government.

(d) The recovery of excess or administrative costs does not preclude the Government from exercising other rights or remedies which it may have by law or under the terminated contract.

[51 FR 15332, Apr. 23, 1936]

SUBCHAPTER H—CLAUSES AND FORMS

PART 1352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 1352.0—General

Sec.
1352.000 Scope of part.
1352.001 General policy.

Subpart 1352.1—Instructions for Using Provisions and Clauses

1352.100 Incorporation by reference.

Subpart 1352.2—Texts of Provisions and Clauses

1352.217-90 Inspection and manner of doing work.
1352.217-91 Delivery of vessel to the contractor.
1352.217-92 Performance.
1352.217-93 Delays.
1352.217-94 Minimization of delay due to government furnished property.
1352.217-95 Additional provisions relating to government property.
1352.217-96 Liability and insurance.
1352.217-97 Title.
1352.217-98 Discharge of liens.
1352.217-99 Department of Labor Occupational Safety and Health Standards for Ship Repairing.
1352.217-100 Regulations governing asbestos work.
1352.217-101 Complete and final equitable adjustments.
1352.217-102 Government review, comment, acceptance, and approval.
1352.217-103 Access to the vessel(s).
1352.217-104 Documentation of requests for equitable adjustment.
1352.217-105 Change proposals.
1352.217-106 Lay days.
1352.217-107 Changes—ship repair.
1325.217-108 Default—ship repair.
1352.217-109 Insurance requirements.
1352.217-110 Guarantees.
1352.217-111 Temporary services.
1352.217-112 Self-insurance information.
1352.219-1 Women-owned small business sources.
1352.233-2 Service of protest.

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2).

SOURCE: 49 FR 12965, Mar. 30, 1984, unless otherwise noted.

Subpart 1352.0—General

1352.000 Scope of part.

This part implements and supplements FAR Part 52 by prescribing specific modifications, alterations, and deviations to FAR solicitation provisions and contract clauses for Department-wide use.

1352.001 General policy.

The Department's policy is to use the FAR and CAR prescribed solicitation provisions and contract clauses unless specific authority for deviations has been obtained. (See 1301.4 for authority to deviate.) The use of uniform solicitation provisions and contract clauses should: provide a less burdensome way for potential contractors to respond to the Government's request for information concerning the evaluation of bids and proposals; expedite solicitation and contract preparation; and facilitate contract negotiation, administration and review. Each solicitation which incorporates contract clauses or solicitation provisions which deviate from those prescribed by the FAR and the CAR must be submitted to the Office of Procurement and Federal Assistance for prior review. The Office of Procurement and Federal Assistance will coordinate requests for approval of these solicitations by the Office of Management and Budget, in accordance with the Paperwork Reduction Act of 1980 and 5 CFR Part 1320.

Subpart 1352.1—Instructions for Using Provisions and Clauses

1352.100 Incorporation by reference.

Contracting officers within the Department shall incorporate solicitation provisions and contract clauses by reference in solicitations and contracts to the maximum extent provided by applicable law and regulation. Incorporation by reference is the listing only by title, regulatory citation, and date of the provision or clause rather than the full text. The full text of the referenced solicitation provision or contract clause is contained in the Code of Federal Regulations (CFR); Chapter 1 of Title 48 for FAR provisions and clauses; and Chapter 13 of Title 48 for CAR provisions and clauses.

Subpart 1352.2—Texts of Provisions and Clauses

SOURCE: 52 FR 3808, Feb. 6, 1987, unless otherwise noted.

1352.217-90 Inspection and manner of doing work.

As prescribed in 1317.7001(a), insert the following clause:

INSPECTION AND MANNER OF DOING WORK
(CAR 1352.217-90) (JAN 1987)

(a) All work and material shall be subject to the approval of the Contracting Officer or his duly authorized representative. Work shall be performed in accordance with the plans and specifications of this contract as modified by any contract modification.

(b) Unless otherwise specifically provided for in the contract, all operational practices of the Contractor and all workmanship and material, equipment and articles used in the performance of work shall be in accordance with American Bureau of Shipping Rules for Building and Classing Steel Vessels, U.S. Coast Guard Marine Engineering Regulations and Material Specifications (Subchapter F 46 CFR), U.S. Coast Guard Electrical Engineering Regulations (Subchapter J 46 CFR) (APR 1982), and U.S.P.H.S., Handbook on Sanitation in Vessel Construction, in effect at the time of the Contractor's submission of bid (or acceptance of the contract, if negotiated), and the best commercial maritime practices, except where military specifications are specified, in which case such standards of material and workmanship shall be followed.

(c) All material and workmanship shall be subject to inspection and test at all times during the Contractor's performance of the work to determine their quality and suitability for the purpose intended and compliance with the contract. In case any material or workmanship furnished by the Contractor is found to be defective prior to redelivery of the vessel, or not in accordance with the requirements of the contract, the Government shall have the right prior to redelivery of the vessel to reject such material or workmanship, and to require its correction or replacement by the Contractor at the Contractor's cost and expense. This Government right is in addition to its rights under any Guarantee clause in this contract. If the Contractor fails to proceed promptly with the replacement or correction of such material or workmanship, as required by the Contracting Officer, the Government may, by contract or otherwise, replace or correct such material or workmanship and charge to the Contractor the excess cost to the Government. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work specified in the contract. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of the contract and for a period of 2 years after delivery of the vessel to the Government.

(d) No welding, including tack welding and brazing, shall be permitted in connection with repairs, completions, alterations, or addition to hulls, machinery or components of vessels unless the welder is at the time, qualified to the standards established by the United States Coast Guard, the American Bureau of Shipping, or the Department of the Navy. The welder's qualifications shall be appropriate for the particular service application, filler material type, position of welding, and welding process involved in the work being undertaken. A welder may be required to requalify if the Contracting Officer believes there is a reasonable doubt concerning the welder's ability. Welder's qualifications for this purpose shall be outlined in "Marine Engineering Regulations" of the United States Coast Guard. When a welding process other than manual shielded arc is proposed or required, the contractor or fabricator shall submit procedure qualification tests for approval prior to production welding. Procedure qualification tests shall be conducted in accordance with the requirements of the "Marine Engineering Regulations" of the United States Coast Guard.

(e) The Contractor shall exercise reasonable care to protect the vessel from fire, and the Contractor shall maintain a reasonable system of inspection over the activities of welders, burners, riveters, painters, plumbers and similar workers, particularly where such activities are undertaken in the vicinity of the vessel's magazine, fuel oil tanks, or storerooms containing flammable material. A reasonable number of hose lines shall be maintained by the Contractor ready for immediate use on the vessel at all times while the vessel is berthed alongside the Contractor's pier or in drydock or on a marine railway. All tanks or bilge areas under alteration or repair shall be cleaned, washed, and steamed out or otherwise made safe by the Contractor if and to the extent necessary as required by good marine practice or by current OSHA Regulations. The Contracting Officer's Technical Representative (COTR) shall be furnished with a "gas free" or "safe for hot work" or "safe for men" certificate before any hot work or entry is done. Unless otherwise provided in this contract, the Contractor shall at all times maintain a reasonable fire watch about the vessel, including a fire watch on the vessel while work is being performed thereon.

(f) The Contractor shall place proper safeguards and/or effect such safety precautions as necessary, including suitable and sufficient lighting, for the prevention of accidents or injury to persons or property during the prosecution of work under this contract and/or from time of receipt of the vessel until acceptance by the Government of the work performed.

(g) Except as otherwise provided in this contract, when the vessel is in the custody of the contractor or in drydock or on a marine railway and the temperature becomes as low as 35 degrees Fahrenheit, the Contractor shall keep all pipelines, fixtures, traps, tanks, and other receptacles on the vessel drained to avoid damage from freezing, or if this is not practicable, the vessel shall be kept heated to prevent such damage. The vessel's stern tube and propeller hubs shall be protected from frost damage by applied heat through the use of a salamander or other proper means, as approved by the COTR.

(h) Whenever practicable, the work shall be performed in a manner which does not interfere with the berthing and messing of personnel attached to the vessel. The Contractor shall ensure that assigned personnel have access to the vessel at all times. It is understood that such personnel will not interfere with the work or the Contractor's workers.

(i) The Government does not guarantee the correctness of the dimensions, sizes, and shapes given in any sketches, drawings, plans or specifications prepared or furnished by the Government. The Contractor shall be responsible for the correctness of the shape, sizes and dimensions of parts to be furnished hereunder, other than those furnished by the Government.

(j) The Contractor shall at all times keep the site of the work on the vessel free from accumulation of waste material or rubbish caused by Contractor employees or the work, and at the completion of the work shall remove all rubbish from and about the site of the work and shall leave the work and its immediate vicinity "broom clean" unless more exactly specified in this contract.

(k) While in drydock or on a marine railway, the Contractor shall be responsible for the closing before the end of working hours, of all valves and openings upon which work is being done by its workers when such closing is practicable. The Contractor shall keep the COTR cognizant of the closure status of all valves and openings upon which the Contractor's workers have been working.

(l) Without additional expense to the Government, the Contractor shall employ specialty subcontractors where required by the specifications or when necessary for satisfactory performance of the work.

(m) When requested by the COTR, the Contractor shall notify the COTR in advance:

(i) Prior to starting inspections or tests; and

(ii) When supplies will be ready for Government inspection.

(n) When advance notification is requested, the authorized COTR shall specify the period and method of notification.

(End of clause)

1352.217-91 Delivery of vessel to the contractor.

As prescribed in 1317.7001(a), insert the following clause:

DELIVERY OF VESSEL TO THE CONTRACTOR (CAR 1352.217-91) (JAN 1987)

(a) The Government shall deliver the vessel to the Contractor at the location specified in the contract.

(b) If the Contractor's plant is specified, it shall be understood to mean the fairway of the plant. The Contractor shall provide necessary tugs and pilot services to move the vessel from the fairway to the pier or dock and, upon completion of all work, from the pier or dock to the fairway of the plant.

(c) While the vessel is in the possession of the Contractor, any necessary movement of the vessel incidental to the work specified in the contract shall be furnished by the Contractor without additional charge to the Government.

(End of clause)

1352.217-92 Performance.

As prescribed in 1317.7001(a), insert the following clause:

PERFORMANCE (CAR 1352.217-92) (JAN 1987)

(a) Upon the issuance of the contract, the Contractor shall promptly commence the work specified in any plans and specifications made a part of the contract, and shall diligently prosecute the work to completion. The Contractor shall not commence work until the contract has been issued.

(b) The Government shall deliver the vessel described in the contract at such time and location as may be specified in the contract. Upon completion of the work, the Government shall accept delivery of the vessel at such time and location as may be specified in the contract.

(c) Without additional charge to the Government, and without specific requirement in the contract, the Contractor shall:

(1) Make available at the plant to personnel of the vessel while in drydock or on a marine railway, toilet and similar facilities acceptable to the Contracting Officer as adequate in number and sanitary standards;

(2) Supply and maintain, in such condition as the Contracting Officer may reasonably require, suitable brows and gangways from the pier, drydock or marine railway to the vessel;

(3) Treat salvage, scrap, or other ship's material of the Government resulting from performance of the work as items of Government furnished property in accordance with the Government Property clause;

(4) Perform, or pay the cost of, any repair, reconditioning or replacement made necessary as the result of the use by the Contractor of any of the vessel's machinery, equipment or fittings, including, but not limited to, winches, pumps, riggings, or pipe lines; and

(5) Furnish suitable offices, office equipment and telephones at or near the site of the work as the Contracting Officer reasonably requires for himself and his staff.

(d) Except as otherwise provided in the contract, the Contractor shall furnish all necessary material, labor, services, equipment, supplies, power, accessories, facilities, and other things and services necessary for accomplishing the work, subject to Government rights under the Government Property clause.

(e) The Contractor shall conduct dock and sea trials of the vessel as required by the contract. Unless otherwise expressly provided in the contract, during the conduct of these trials the vessel shall be under the control of the vessel's commander and crew with representatives of the Contractor and the Government on board to determine whether or not the work done by the Contractor has been satisfactorily performed. Dock and sea trials not specified which the Contractor requires for his own benefit shall not be undertaken by the Contractor without prior notice to and approval of the Contracting Officer; any such dock or sea trial shall be conducted at the risk and expense of the Contractor. The Contractor shall provide and install all fittings and appliances which may be necessary for the dock and sea trials, to enable the representatives of the Government to determine whether the requirements of the contract plans and specifications have been met. The Contractor shall also be responsible for the care, installation and removal of any instruments and apparatus furnished by the Government for such trials.

(End of clause)

1352.217-93 Delays.

As prescribed in 1317.7001(a), insert the following clause:

DELAYS (CAR 1352.217-93) (JAN 1987)

When during the performance of this contract the Contractor is required to delay the work on a vessel temporarily, due to orders or actions of the Government respecting stoppage of work to permit shifting the vessel, stoppage of hot work to permit bunkering, fueling, stoppage of work due to embarking or debarking passengers and loading or discharging cargo, and the Contractor is not given sufficient advance notice or is otherwise unable to avoid incurring additional costs on account thereof, an equitable adjustment may be made in the contract price pursuant to the Changes clause.

(End of clause)

1352.217-94 Minimization of delay due to government furnished property.

As prescribed in 1317.7001(a), insert the following clause:

MINIMIZATION OF DELAY DUE TO GOVERNMENT FURNISHED PROPERTY (CAR 1352.217-94) (JAN 1987)

(a) In order to assure timely delivery of the vessel under this contract, it is imperative that delay in delivery of such vessel resulting from late, damaged, or unsuitable Government furnished property be held to an absolute minimum. In order to achieve minimization of delay it is agreed that:

(1) Subject to adjustment as provided in paragraph (b) of this clause, the Government shall deliver each item of Government furnished property to the Contractor on or before the date specified in the contract or, if later, in sufficient time for the contractor to deliver the vessel in accordance with the delivery schedule specified elsewhere.

(2) The Government may forego furnishing any item of Government property to the Contractor. In that event, the Contractor shall prepare the vessel in terms of piping, wiring, structure, foundation, ventilation, and any other preinstallation requirements of the item, so that the work on the vessel may continue without delay and disruption resulting from the absence of the item. If the Government does not furnish an item designated as Government furnished property, the parties may be entitled to an equitable adjustment in the contract price, in accordance with the Changes clause for eliminating the requirement to install the Government property item. But, notwithstanding any other clause of this contract,

an adjustment shall not be made in the delivery schedule of any vessel if the Government chooses not to furnish the item on or before the delivery date of the item. If the Government subsequently desires the Contractor to install the item prior to delivery of the vessel, a contract modification shall be executed which takes into account any increase in cost or performance time resulting from the installation.

(b) If the delivery date for the vessel is extended for any reason, the latest date for which the Government must deliver items of Government property shall be deemed to be extended by an equal number of days unless (i) the Contracting Officer agrees in writing that earlier delivery of the items is required, in which case some or all of the Government property shall be extended as agreed rather than on a day-for-day basis, or (ii) a Government property item was the exclusive cause for the extension of the delivery date of the vessel in which case the latest date by which the Government must deliver the item shall not be deemed to be extended unless the parties agree otherwise.

(c) The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government furnished property suitable for use (except for such property furnished "as is") will be delivered to the Contractor at the time stated in the specification or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. If the Government furnished property is not delivered to the Contractor by such time and the Contractor makes a timely written request, the Contracting Officer shall determine if an equitable adjustment is appropriate. If determined appropriate, the Contracting Officer shall equitably adjust the delivery or performance date, the specifications, the price, or any other contractual provision affected by any such delay, in accordance with the Changes clause.

(d) The Government Property and Minimization of Delay Due to Government Furnished Property clauses contain exclusive remedies. The Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government furnished property or delivery of such property in a condition not suitable for its intended use.

(End of clause)

1352.217-95 Additional provisions relating to government property.

As prescribed in 1317.7001(a), insert the following clause:

ADDITIONAL PROVISIONS RELATING TO GOVERNMENT PROPERTY (CAR 1352.217-95) (JAN 1987)

(a) Notwithstanding any requirements to the contrary for the furnishing of material by the Government which may appear in plans, drawings, or other data, the Government shall furnish only the material specifically listed in the specifications as Government furnished property. Any material required for the performance of the contract which does not appear in the specifications as Government furnished shall be furnished by the Contractor.

(b) The Contracting Officer may increase the amount of material to be furnished by the Government and the contract shall be equitably adjusted in accordance with the Government Property clause.

(c) Unless otherwise specifically directed by the Contracting Officer, nonreusable crates and other nonreusable packaging in which Government material is delivered to the Contractor shall become the property of the Contractor upon removal of the packaged or crated material.

(d) Any packaging in preparation for delivery or for other disposal of Government property by the Contractor at the direction or authorization of the Contracting Officer pursuant to paragraph (i) of the Government Property clause shall be provided for by change order and an appropriate adjustment shall be made in the contract price in accordance with the Changes clause.

(e) The vessel, its equipment, movable stores, cargo and other ship's material are not designated Government furnished property under the Government Property clause.

(End of clause)

1352.217-96 Liability and insurance.

As prescribed in 1317.7001(a), insert the following clause:

LIABILITY AND INSURANCE (CAR 1352.217-96) (JAN 1987)

(a) The Contractor shall exercise reasonable care and use its best efforts to prevent accidents, injury or damage to all employees, persons and property, in and about the work, and to the vessel or part thereof upon which work is done.

(b) The Contractor shall be responsible for and make good at its own cost and expense any and all loss of or damage of whatsoever nature to the vessel (or part thereof), its equipment, movable stores and cargo, and Government owned material and equipment for the repair, completion, alteration of or addition to the vessel in the possession of the Contractor, whether at the plant or elsewhere, arising or growing out of the performance of the work, except where the Contractor can affirmatively show that such loss or damage was due to causes beyond the Contractor's control, was proximately caused by the fault or negligence of agents or employees of the Government, or which loss or damage the Contractor by exercise of reasonable care was unable to prevent. However, the Contractor shall not be responsible for any such loss or damage discovered after redelivery of the vessel unless (i) the loss or damage is discovered within 90 days after redelivery of the vessel and (ii) loss or damage is affirmatively shown to be the result of the fault or negligence of the Contractor. To induce the Contractor to perform the work for the compensation provided, it is specifically agreed that the Contractor's aggregate liability on account of loss of or damage to the vessel (or part thereof), its equipment, movable stores and cargo and Government owned materials and equipment shall in no event exceed the sum of $300,000. As to the Contractor, the Government assumes the risk of loss or damage to the Government-owned vessel (or part thereof), its equipment, movable stores and cargo and said Government-owned materials and equipment in excess of $300,000. This assumption of risk includes but is not limited to loss or damage from negligence of whatsoever degree of the Contractor's servants, employees, agents or subcontractors but specifically excludes loss or damage from willful misconduct or lack of good faith on the part of the Contractor's directors, officers and any of its managers, superintendents or other equivalent representatives who have supervision or direction of (i) all or substantially all of the Contractor's business, or (ii) all or substantially all of the Contractor's operation at any one plant. However, as to such risk assumed and borne by the Government, the Government shall be subrogated to any claim, demand or cause of action against third persons which exists in favor of the Contractor, and the contractor shall, if required, execute a formal assignment or transfer of claims, demands or causes of action. Nothing contained in this paragraph shall create or give rise to any right, privilege or power in any person except the Contractor, nor shall any person (except the Contractor) be or become entitled thereby to proceed directly against the Government, or join the Government as a co-defendent in any action against the Contractor brought to determine the Contractor's liability, or for any other purpose.

(c) The Contractor indemnifies and holds harmless the Government, its agencies and instrumentalities, and the vessel against all suits, actions, claims, costs or demands (including without limitation, suits, actions, claims, costs or demands resulting from death, personal injury and property damage) to which the Government, its agencies and instrumentalities, or the vessel may be subject or put by reason of damage or injury (including death) to the property or person of any one other than the Government, its agencies, instrumentalities and personnel, or the vessel arising or resulting in whole or in part from the fault, negligence, wrongful act or wrongful omission of the Contractor, or any subcontractor, its or their servants, agents or employees; provided that the Contractor's obligation to indemnify under this paragraph (c) shall not exceed the sum of $300,000 on account of any one accident or occurrence in respect of any one vessel. Such indemnity shall include, without limitation, suits, actions, claims, costs or demands of any kind whatsoever, resulting from death, personal injury or property damage occurring during the period of performance of work on the vessel or within 90 days after redelivery of the vessel. With respect to any such suits, actions, claims, costs or demands resulting from death, personal injury or property damage occurring after the expiration of such period, the rights and liabilities of the Government and the Contractor shall be as determined by other provisions of this contract and by law; provided that such indemnity shall apply to death occurring after such period which results from any personal injury received during the period covered by the Contractor's indemnity as provided herein.

(d) The Contractor shall, at its own expense, procure, and thereafter maintain such casualty, accident and liability insurance, in such forms and amounts as may be approved by the Contracting Officer, insuring the performance of its obligations under paragraph (c) of this clause. In addition, the Contractor shall at its own expense procure and thereafter maintain such ship repairer's legal liability insurance as may be necessary to insure the Contractor against its liability as ship repairer in the amount of $300,000, or the value of the vessel as determined by the Contracting Officer, whichever is the lesser, with respect to each vessel on which work is performed. The Contractor shall cause the Government to be named as an additional insured under any and all liability insurance policies. However, at the discretion of the Contracting Officer, such insurance need not be procured whenever the job order requires work on parts of a vessel only and the work is to be performed at a plant other than the site of the vessel. Further, the Contractor shall procure and maintain in force Workmen's Compensation Insurance (or its equivalent) covering its employees engaged in the work and shall insure the procurement and maintenance of such insurance by all subcontractors engaged in the work. The Contractor shall provide evidence of insurance as required by the Government.

(e) The Contractor shall receive no allowance in the contract price for inclusion of any premium expense or charge for any reserve made on account of self-insurance for coverage against any risk assumed by the Government under this clause.

(f) As soon as practicable after the occurrence of any loss or damage the risk of which the Government has assumed, written notice of the damage shall be given by the Contractor to the Contracting Officer. The notice shall contain full particulars of the loss or damage. If claim is made or suit is brought thereafter against the Contractor as the result or because of such event, the Contractor shall immediately deliver to the Government every demand, notice, summons or other process received by it or its representatives. The Contractor shall cooperate with the Government and, upon the Government's request, shall assist in effecting settlements, securing and giving evidence; obtaining the attendance of witnesses and in the conduct of suits. The Government shall pay to the Contractor the expense, other than the cost of maintaining the Contractor's usual organization, incurred in this assistance. Except at its own cost, the Contractor shall not voluntarily make any payment, assume any obligation or incur any expense not imperative for the protection of the vessel or vessels at the time of the event.

(End of clause)

1352.217-97 Title.

As prescribed in 1317.7001(a), insert the following clause:

TITLE (CAR 1352.217-97) (JAN 1987)

Unless title to materials and equipment acquired or produced for, or allocated to, the performance of this contract shall have vested previously in the Government by virtue of other provisions of this contract, title to all materials and equipment to be incorporated in any vessel or part thereof, or to be placed upon any vessel or part hereof in accordance with the requirements of the contract, shall vest in the Government upon delivery thereof at the plant or such other location as may be specified in the contract for the performance of the work. However, the Contractor is fully responsible for all such Contractor furnished materials and equipment or the restoration of any damaged work. It is expressly understood and agreed that the Contractor shall assume without limitation the risk of loss for any such materials and equipment until such time as all work is completed and accepted by the Government and the vessel is redelivered to the Government. Upon completion of the contract, or with the approval of the Contracting Officer at any time during the performance of the contract, all such Contractor furnished materials and equipment not incorporated in any vessel or part thereof, or not placed upon any vessel or part thereof, in accordance with the requirements of the contract, shall become the property of the Contractor, except those materials and equipment the cost of which has been reimbursed by the Government to the Contractor.

(End of clause)

1352.217-98 Discharge of liens.

As prescribed in 1317.7001(a), insert the following clause:

DISCHARGE OF LIENS (CAR 1352.217-98) (JAN 1987)

The Contractor shall immediately discharge or cause to be discharged any lien or right in rem of any kind, other than in favor of the Government, which at any time exists or arises in connection with work done or materials furnished under any contract hereunder with respect to the machinery, fittings, equipment or materials for any of the vessels. If any such lien or right in rem is not immediately discharged, the Government may discharge or cause to be discharged such lien or right at the expense of the Contractor.

(End of clause)

1352.217-99 Department of Labor Occupational Safety and Health Standards for Ship Repairing.

As prescribed in 1317.7001(a), insert the following clause:

DEPARTMENT OF LABOR OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIP REPAIRING (CAR 1352.217-99) (JAN 1987)

Attention of the Contractor is directed to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651-678), and to the Occupational Safety and Health Standards for Shipyard Employment (29 CFR 1915), promulgated under Pub. L. 85-742, amending Section 41 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 941), and adopted by the Department of Labor as occupational safety or health standards under Section 6(a) of the Occupation Safety and Health Act of 1970 (29 CFR 1910.13). These regulations apply to all ship repair and related work, as defined in the regulations, performed under this contract on the navigable waters of the United States, including any dry dock or marine railway. Nothing contained in this contract shall be construed as relieving the Contractor from any obligations which it may have for compliance with the aforesaid regulations.

(End of clause)

1352.217-100 Regulations governing asbestos work.

As prescribed in 1317.7001(a), insert the following clause:

REGULATIONS GOVERNING ASBESTOS WORK (CAR 1352.217-100) (JAN 1987)

If asbestos is encountered, the Contractor shall follow the regulations contained in 29 CFR 1910.1001 (OSHA, Chapter XVII).

(End of clause)

1352.217-101 Complete and final equitable adjustments.

As prescribed in 1317.7001(a), insert the following clause:

COMPLETE AND FINAL EQUITABLE ADJUSTMENTS (CAR 1352.217-101) (JAN 1987)

Whenever the Contractor submits any claim for an equitable adjustment attributable to any fact or circumstance regarded as a change order whether formal or "constructive," under the Changes clause or any other clause of this contract, such claim shall include all adjustments (including but not limited to adjustments arising out of delays or disruptions or both caused by such change order) to which the Contractor is entitled under this contract. The foregoing requirement shall not preclude the Contractor from revising or resubmitting the claim prior to agreement upon the equitable adjustment for the change order. However, unless otherwise expressly agreed in the aforesaid supplemental agreement, the Contractor shall waive any right under the Changes clause or any other clause of this contract to further equitable adjustments attributable to such facts or circumstances giving rise to the claim upon the execution of the supplemental agreement setting forth the equitable adjustment. In any event, such right shall be deemed to be waived.

(End of clause)

1352.217-102 Government review, comment, acceptance, and approval.

As prescribed in 1317.7001(a), insert the following clause:

GOVERNMENT REVIEW, COMMENT, ACCEPTANCE AND APPROVAL (CAR 1352.217-102) (JAN 1987)

(a) Documentation, including drawings and other engineering products and reports, required by the contract to be submitted for review, comment, acceptance or approval will be acted upon by the Government within 30 calendar days after receipt by the Government, unless another period of time is specified.

(b) Review, comment, acceptance or approval by the Government as required under this contract and applicable specifications shall not relieve the Contractor of its obligation to comply with the specifications and with all other requirements of the contract, nor shall it impose upon the Government any liability it would not have had in the absence of such review, comment and acceptance or approval.

(End of clause)

1352.217-103 Access to the vessel(s).

As prescribed in 1317.7001(a), insert the following clause:

ACCESS TO THE VESSEL(S) (CAR 1352.217-103) (JAN 1987)

(a) As authorized by the Contracting Officer, a reasonable number of officers, employees and associates of the Government, or other prime Contractors with the Government and their subcontractors shall have admission to the plant and access to the vessel(s) at all reasonable times to perform and fulfill their respective obligations to the Government on a noninterference basis. The Contractor shall make reasonable arrangements to provide access for these personnel to office space, work areas, storage or shop areas, and other facilities and services, reasonable and necessary to performance of their respective duties. All such personnel shall comply with Contractor rules and regulations governing personnel at its shipyard, including those regarding safety and security.

(b) The Contractor further agrees to allow a reasonable number of officers, employees, and associates of offerors on other contemplated work, the same privileges of admission to the Contractor's plant and access to the vessel(s) on a noninterference basis subject to Contractor rules and regulations governing personnel in its shipyard, including those regarding safety and security.

(End of clause)

1352.217-104 Documentation of requests for equitable adjustment.

As prescribed in 1317.7001(a), insert the following clause:

Documentation of Requests for Equitable Adjustment (CAR 1352.217-104) (Jan 1987)

(a) For the purpose of this clause, the term "change" includes not only a change made pursuant to a written order designated as a "change order" but also any act or omission to act on the part of the Government where a request is made for equitable adjustment.

(b) Whenever the Contractor requests or proposes an equitable adjustment to the contract price of not more than $100,000, for a change or an act or omission on the part of the Government, the request shall include a breakdown of the price adjustment in such form and supported by such reasonable detail as the Contracting Officer may request. As a minimum, the Contractor shall provide a breakdown of direct labor hours, labor dollars, overhead, material, subcontracts, contingencies and profit for each change and a justification for any extension of delivery date.

(c) Whenever the Contractor requests or proposes an equitable adjustment of $100,000 gross (aggregate increases and/or decreases) or more to the price of the contract for a change made pursuant to a written order designated as a "change order" or whenever the Contractor requests an equitable adjustment in any amount for any other act or omission to act on the part of the Government, the proposal supporting such request shall contain the following information for each individual item or element of the request:

(1) A description of (i) the unperformed work required by the contract before the change which has been deleted by the change and (ii) the work deleted by the change that already has been completed in whole or in part. The description shall include a list of components, equipment, and other identifiable property involved. Also, the status of manufacture, procurement, or installation of such property shall be indicated. A separate description shall be furnished for design and production work. Items of raw material, purchased parts, components, and other identifiable hardware which are made excess by the change, and which are not to be retained by the Contractor, are to be listed for later disposition;

(2) A description of the work necessary to undo work already completed which has been deleted by the change;

(3) A description of the work substituted or added by the change that was not required by the terms of the contract before the change. A list of components and equipment (not bulk material or items) involved, should be included. A separate description shall be furnished for design work and production work;

(4) A description of any interference or inefficiency encountered in performing the change;

(5) A description of disruption attributable solely to the change, which shall include the following information:

(i) A specific description of each element of disruption which states how the work has been, or will be, disrupted;

(ii) The calendar time period when disruption occurred, or will occur;

(iii) The area(s) aboard ship where disruption occurred, or will occur;

(iv) The trade(s) disrupted, with a breakdown of man-hours for each trade;

(v) The scheduling of trades before, during, and after the period of disruption;

(vi) A description of measures taken to lessen the disruptive effect of the change.

(6) The delay in delivery attributable solely to the change;

(7) A description of other work attributed to the change;

(8) A narrative statement of the direct causal relationship between any alleged Government act or omission and the claimed result, cross-referenced to the detailed information required above.

(9) A statement setting forth a comparative enumeration of the amounts "budgeted" for the cost elements, including the materials cost, labor hours, and indirect costs pertinent to the change estimated by the Contractor in preparing his initial and ultimate proposal(s) for this contract, and the amounts claimed to have been incurred, or projected to be incurred, corresponding to each such "budgeted cost" element.

(d) In addition to the information required by paragraph (b), each proposal submitted in support of a claim for equitable adjustment in the amount of $100,000 or more under any provision of this contract shall contain a duly executed Standard Form 1411 (Contract Pricing Proposal) for each individual claim item. The submitted Standard Form 1411 shall fully comply with Section 15.804-6 of the Federal Acquisition Regulation and any instructions on the reverse side of the form.

(e) In addition to the information required by paragraph (c), each proposal submitted in support of a claim for equitable adjustment under any provision of this contract shall contain a duly executed SF-1411 (Contracting Pricing Proposal) for each individual claim item. The submitted SF-1411 shall fully comply with Section 15.804-6 of the Federal Acquisition Regulation and any instructions on the reverse side of the form.

(f) Individual claims for equitable adjustment may not encompass all of the factors listed in (c) above. Accordingly, the Contractor is required to set forth in his proposal information only with respect to those factors which are encompassed in the individual claim for equitable adjustment. In any event, the information furnished hereunder shall be in sufficient detail to permit the Contracting Officer to correlate the claimed increased costs or delay in delivery set forth in the SF-1411 (Contracting Pricing Proposal) with the information submitted pursuant to paragraph (c).

(End of clause)

1352.217-105 Change proposals.

As prescribed in 1317.7001(a), insert the following clause:

CHANGE PROPOSALS (CAR 1352.217-105) (JAN 1987)

(a)(1) In addition to issuing changes under the Changes clause, the Contracting Officer may propose changes within the general scope of this contract, as set forth below. Within 10 days from the date of receipt of any such proposed change, or within such further time as the Contracting Officer may allow, the Contractor shall submit a scope of work, plans and sketches for the proposed change, and his estimate of: (i) the cost, (ii) the effect on the delivery date of the vessel, and (iii) the status of work on the ship affected by the proposed change. The proposed scope of work and estimate of the cost shall be in such form and supported by such reasonably detailed information as the Contracting Officer may require.

(2) The Contractor's estimate shall be a firm offer for 30 days from receipt thereof by the cognizant Contracting Officer, unless extended by mutual consent. Within the time limit, the Contractor agrees to either (i) enter into a supplemental agreement covering the estimate as submitted or (ii) begin good faith negotiations at the request of the Contracting Officer, leading to the execution of a bilateral supplemental agreement, if the estimate as submitted is not satisfactory to the Contracting Officer. In either case, the supplemental agreement shall include an equitable adjustment for the preparatory work set forth above.

(b) Pending execution of a bilateral agreement or the direction of the Contracting Officer pursuant to the Changes clause, the Contractor shall proceed diligently with contract performance without regard to the effect of any such proposed change.

(c) Concurrently with the submission of any Change Proposal under this contract in which the proposed aggregate cost is $100,000 or greater, the Contractor shall submit to the Contracting Officer a completed Standard Form 1411. At the time of agreement upon the price of the Change Proposal, the Contractor shall submit a signed Certificate of Current Cost or Pricing Data.

(End of clause)

1352.217-106 Lay days.

As prescribed in 1317.7001(a), insert the following clause:

LAY DAYS (CAR 1352.217-106) (JAN 1987)

(a) Lay day time will be paid for by the Government at the Contractor's stipulated bid price for this item of the contract when the vessel remains on the dry dock or marine railways as a result of any Government change that involves work in addition to that required under the basic contract.

(b) No amount for lay day time shall be paid until all accepted items of the basic contract for which a price was established by the Contractor and for which docking of the vessel was required have been satisfactorily completed.

(c) Days of hauling out and floating, whatever the hour, shall not be paid as lay day time, and days when no work is performed by the Contractor shall not be paid as lay day time.

(d) Payment of lay day time shall constitute complete compensation for all costs except for the direct cost of performing the changed work.

(End of clause)

1352.217-107 Changes—ship repair.

As prescribed in 1317.7001(a), insert the following clause:

CHANGES—SHIP REPAIR (CAR 1352.217-107) (JAN 1987)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract, in any one or more of the following:

(1) Drawings, designs, or specifications, when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications;

(2) Method of shipment or packing;

(3) Place of performance of the work;

(4) Time of commencement or completion of the work; and

(5) Other requirements within the general scope of the contract.

(b) If any such change causes an increase or decrease in the cost of, or the time requried for, performance of any part of the work under this contract, whether changed or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must submit any proposal for adjustment (hereafter referred to as proposal) under this clause within 10 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

1352.217-108 Default—ship repair.

As prescribed in 1317.7001(a), insert the following clause:

Default—Ship Repair (CAR 1352.217-108) (Jan 1987)

(a) The Government may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—

(1) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(2) Make progress, so as to endanger performance of this contract; or

(3) Perform any of the other provisions of this contract.

(b) If the Government terminates this contract in whole or in part, it may arrange for completion of the work in the manner the Contracting Officer considers appropriate. The Contracting Officer may designate any plant or plants for completion of the work, including the Contractor's plant or plants. If the work is to be completed at the Contractor's plant, the Government may use all tools, machinery, facilities and equipment of the Contractor which the Contracting Officer determines to be necessary. The Contractor will be liable to the Government for any excess costs, other than those costs attributable to changes in the plans or specifications made after the termination date. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

1352.217-109 Insurance requirements.

As prescribed in 1317.7001(b), insert the following clause:

Insurance Requirements (CAR 1352.217-109) (Jan 1987)

(a) The Contractor shall procure and thereafter maintain the following insurance:

(1) Ship repairer's legal liability insurance to insure the risks described in paragraph (b) of the Liability and Insurance clause. This insurance shall be for $300,000.

(2) Comprehensive general liability insurance and automobile insurance to insure the risks described in paragraph (c) of the Liability and Insurance clause. This insurance shall be for $300,000 on account of any one accident or occurrence with respect to each vessel, boat, and/or barge upon which work is performed. The Contractor shall cause the Government to be named as an additional insured under any and all liability insurance policies.

(3) Full coverage in accordance with the State Workmen's Compensation law; and

(4) Full coverage in accordance with the United States Longshoremen's and Harbor Worker's Act.

(b) As evidence that it has obtained the insurance specified in (a) above, the Contractor shall furnish the Contracting Officer with a certificate or certificates executed by an agent of the insurer authorized to execute such certificates. Such certificates shall be furnished prior to commencement of the work. Each certificate shall state that (name of insurer) has insured (name of Contractor) awarded contract number ________ for repair/alteration of (name of vessel) in accordance with the Liability and Insurance clause and the Insurance Requirements clause contained herein. Each certificate shall set forth that each policy of insurance represented thereby will expire on (date) and that each such policy contains the following clause:

"It is agreed that in the event of cancellation, or any material change in the policy adversely affecting the interest of the Government in this insurance 30 days prior written notice will be given to the Contracting Officer."

(End of clause)

1352.217-110 Guarantees.

As prescribed in 1317.7001(c), insert the following clause:

Guarantees (CAR 1352.217-110) (Jan 1987)

In case any work done or materials furnished by the Contractor under this contract on or for any vessel or the equipment thereof shall, within 90 days from the date of redelivery of the vessel by the Contractor, prove defective or deficient, such defects or deficiencies shall, as required by the Government in writing, be corrected and repaired by the Contractor or at Contractor expense to the satisfaction of the Contracting Officer. However, the Government shall be entitled to rely upon any guarantee secured by the Contractor or any subcontractor covering work done on materials furnished which exceeds the 90-day period until the expiration. Also, with respect to any individual work item identified and listed as incomplete at the redelivery of the vessel, the guarantee period shall run from the date of completion of such item. If and when practicable, the Government shall afford the Contractor an opportunity to effect such corrections and repairs itself. But, when it is impracticable or undesirable to return it to the Contractor, or the Contractor fails to proceed promptly with any such repairs as directed by the Contracting Officer, the corrections and repairs shall be made at Contractor expense at other Government designated locations. Where corrections and repairs are to be made by other than the Contractor, due to non-return of the vessel to the Contractor, the Contractor's liability may be discharged by an equitable deduction in the price of the contract. The Contractor's liability shall only extend for an additional 90-day guarantee period on those defects or deficiencies which it corrected and in no event to those for which payment was made. However, this clause does not limit the responsibility or relieve the liability of the Contractor under the Liability and Insurance clause. At the Contracting Officer's option, defects and deficiencies may be left in their uncorrected condition. In that event, the Contractor and the Contracting Officer shall agree on an equitable deduction from the contract price. If the Contractor and the Contracting Officer fail to agree upon an equitable deduction from the contract price, the dispute shall be determined in accordance with the Disputes clause.

(End of clause)

1352.217-111 Temporary services.

As prescribed in 1317.7001(d), insert the following clause:

Temporary Services (CAR 1352.217-111) (Jan 1987)

(a) Temporary services are services incidental to the performance of work which are required in the schedule or specifications to be provided by the contractor. Temporary services may include the furnishing of water, electricity, telephone service, toilet facilities, garbage removal, office space, parking places, or similar facilities as specified in the schedule or specifications.

(b) If performance time is extended due to Government caused delay or causes beyond the control of both the contractor and subcontractor, and without the fault or negligence of either, the contractor shall have the right to request an equitable adjustment for providing temporary services in excess of the number of estimated days contained in the schedule. Any such equitable adjustment shall not exceed the amount obtained by multiplying the number of excess days by the contractor's unit price contained in the schedule for this item.

(End of clause)

1352.217-112 Self-insurance information.

As prescribed in 1317.7001(e), insert the following provision:

SELF-INSURANCE INFORMATION (CAR 1352.217-112) (JAN 1987)

An offeror who proposes to self-insure for any or all of the risks set forth in the Liability and Insurance clause and the Insurance Requirements clause shall submit satisfactory evidence to permit the Contracting Officer to determine that the offeror's assets are sufficient for the risks set forth in such clauses. The offeror shall submit with its offer 2 certified copies of documents listing its assets and liabilities and other information deemed necessary by the offeror or required by the Contracting Officer. For approval of self-insurance under the State Workmen's Compensation Law and the United States Longshoremen's and Harbor Workers' Act, evidence of qualifications as a self-insurer under the applicable compensation statute must be furnished to the Contracting Officer.

(End of provision)

1352.219-1 Women-owned small business sources.

As prescribed in 1319.7003, insert the following provision:

WOMEN-OWNED SMALL BUSINES SOURCES (MAY 1985)

The contractor agrees to develop a list of qualified bidders that are women-owned small businesses. The Small Business Administration Procurement and Automated Source System (PASS) and the Minority Vendor Profile System (MVPS) may be used for this purpose. The contractor may contact the Department of Commerce, Office of Small and Disadvantaged Business Utilization (OSDBU) for assistance.

The Contractor shall provide opportunities for women-owned small businesses to compete for subcontracts by making information on forthcoming opportunities available.

Where the clause "Small Business and Small Disadvantaged Business Subcontracting Plan" is required in accordance with FAR 19.708(b), the contractor shall include qualified women-owned small businesses in the subcontracting plan.

(End of provision)

[51 FR 15333, Apr. 23, 1986]

1352.233-2 Service of protest.

As prescribed in 1333.106, insert the following provision:

SERVICE OF PROTEST (JAN 1985) (Deviation FAR 52.233-2)

Protests, as defined in § 33.101 of the Federal Acquisition Regulation, shall be served on the Contracting Officer and the Contract Law Division of the Office of the Assistant General Counsel for Finance and Litigation by obtaining written and dated acknowledgement of receipt from the Contracting Officer or the head of the contracting office or designee and from the Contract Law Division of the Office of the Assistant General Counsel for Finance and Litigation located at the U.S. Department of Commerce, Herbert C. Hoover Building, Room H5882, 14th St. between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

[Insert the address of the contracting officer or refer to the number of the block on the Standard Form 33 or 1442, etc., where the address of the contracting offfice is located.]

(End of provision)

[51 FR 15333, Apr. 23, 1986]

PART 1353—FORMS

Sec.
1353.000 Scope of part.

Subpart 1353.1—General

1353.103 Exceptions.

Subpart 1353.2—Prescription of Forms

1353.200 Scope of subpart.
1353.204 Administrative matters.
1353.204-2 Contract reporting (CD 409).
1353.213 Small purchase and other simplified purchase procedures (CD 404).
1353.232 Contract financing.
1353.232-2 (CD 45).

Sec.
Appendix A—Forms [Note]

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Source: 49 FR 12965, Mar. 30, 1984, unless otherwise noted.

1353.000 Scope of part.

This part supplements FAR Part 53 by prescribing specific exceptions to FAR prescribed forms for Department-wide use.

Subpart 1353.1—General

1353.103 Exceptions.

The Department's policy is to use the FAR and CAR prescribed forms unless prior specific authority for exceptions or alterations has been obtained. Requests for exceptions to FAR or CAR forms shall be submitted to the Office of Procurement and Federal Assistance in the form prescribed by FAR 53.103 (See 1301.4 for authority to deviate).

Subpart 1353.2—Prescription of Forms

1353.200 Scope of subpart.

This subpart prescribes forms for Department-wide use which are exceptions to FAR prescribed forms. This subpart is arranged by subject matter, in the same order and keyed to the parts of the FAR or CAR in which the form use requirements are addressed.

1353.204 Administrative matters.

1353.204-2 Contract reporting (CD 409).

(a) *CD 409 (11/84) Report of Individual Procurement (over $10,000).* CD 409 is prescribed for Department-wide use in reporting individual contract actions above $10,000, in lieu of SF 279.

[50 FR 19364, May 8, 1985, and 51 FR 1377, Jan. 13, 1986]

1353.213 Small purchase and other simplified purchase procedures (CD 404).

(e) *CD 404 (1/84) Supply, Equipment of Service Order.* In lieu of OFs 347 and 348, CD 404 is prescribed for Department-wide use as follows:

(1) To accomplish small purchases

(2) To issue orders under basic ordering agreements

(3) To issue orders for paid advertisements

(4) To issue orders for construction or dismantling, demolition, or removal of improvements.

[50 FR 19365, May 8, 1985, and 51 FR 1377, Jan. 13, 1986]

1353.232 Contract financing.

A Department approved procurement request form certifies the availability of adequate funds for contract actions (See FAR 32.702). The Department's procurement request form also transmits technical and other specifications of the request, administrative approvals and clearances, and information for processing payments.

[50 FR 19365, May 8, 1985, and 51 FR 1377, Jan. 13, 1986]

1353.232-2 (CD 45).

CD 45 (3/76) Requisitioning Form. CD 45 is prescribed for Department-wide use in requesting action from the servicing contract office. This form is the vehicle for administrative approvals, clearances, and certification of the availability of adequate funds as specified in FAR 32.702.

Appendix A—Forms

Editorial Note: Appendix A published at 49 FR 12967, Mar. 30, 1984 and confirmed at 51 FR 1377, Jan. 13, 1986, does not appear in the Code of Federal Regulations. For Federal Register citations affecting Appendix A, see the List of CFR Sections Affected, in the Finding Aids section of this volume.

CHAPTER 14—DEPARTMENT OF THE INTERIOR

SUBCHAPTER A—GENERAL

Part *Page*

1401 Department of the Interior Acquisition Regulation System 797

1403 Improper business practices and personal conflicts of interest 800

1404 Administrative matters 801

1405 Publicizing contract actions 803

1406 Competition requirements 804

SUBCHAPTER B—ACQUISITION PLANNING

1407 Acquisition planning 805

1409 Contractor qualifications 805

1410 Specifications, standards and other purchase descriptions 807

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

1413 Small purchases and other simplified purchase procedures 809

1414 Sealed bidding 809

1415 Contracting by negotiation 810

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

1419 Small business and small disadvantaged business concerns 816

1420 Labor surplus area concerns 819

1424 Protection of privacy and freedom of information 819

1425 Foreign acquisition 820

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

1428 Bonds and insurance 822

1432 Contract financing 823

Part Page
1433 Protests, disputes, and appeals 824

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

1436 Construction and architect-engineering contracts . 828
1437 Service contracting.. 829

SUBCHAPTER G—CONTRACT MANAGEMENT

1442 Contract administration.. 831

SUBCHAPTER H—CLAUSES AND FORMS

1452 Solicitation provisions and contract clauses............ 832
1453 Forms.. 840

SUBCHAPTER A—GENERAL

PART 1401—DEPARTMENT OF THE INTERIOR ACQUISITION REGULATION SYSTEM

Subpart 1401.1—Purpose, Authority, Issuance

Sec.
1401.105 OMB approval under the Paperwork Reduction Act.

Subpart 1401.3—Agency Acquisition Regulations

1401.301 Policy.
1401.302 Limitations.
1401.303 Publication and codification.
1401.304 Agency control and compliance procedures.

Subpart 1401.6—Contracting Authority and Responsibilities

1401.601 General.
1401.602 Contracting officers.
1401.602-1 Authority.
1401.603 Selection, appointment and termination of appointment.
1401.603-1 General.
1401.670 Appointment and termination of appointment of contracting officers' representatives.
1401.670-1 General.
1401.670-2 Appointment.
1401.670-3 Limitations.
1401.670-4 Termination.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

SOURCE: 49 FR 14252, Apr. 10, 1984, unless otherwise noted.

Subpart 1401.1—Purpose, Authority, Issuance

1401.105 OMB approval under the Paperwork Reduction Act.

The information collection and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The following OMB control numbers:

DIAR segment	OMB control No.
1452.204-72	1084-0019
1452.210-70	1084-0017
1452.225-70	1084-0018

Subpart 1401.3—Agency Acquisition Regulations

1401.301 Policy.

(a) Subject to the authorities in paragraph (c) of this section, the Department issues acquisition regulations which implement or supplement the FAR under the Department of the Interior Acquisition Regulations (DIAR) System. The regulations, as part of the FAR system, are issued in accordance with the policy in FAR 1.301(a)(1).

(b) Subject to the authorities in paragraph (c) of this section, the Department also issues internal guidance and instructions under the DIAR System in accordance with the policy in FAR 1.301(a)(2).

(c) Regulations and internal guidance under the DIAR System are issued pursuant to the authority of the Secretary of the Interior under 5 U.S.C. 301 and 40 U.S.C. 486(c). This authority has been delegated to the Assistant Secretary—Policy, Budget and Administration under Part 209, Chapter 4.1A of the Departmental Manual (209 DM 4.1A).

[49 FR 14252, Apr. 10, 1984, as amended at 51 FR 41965, Nov. 20, 1986]

1401.302 Limitations.

DIAR System regulations and internal guidance conform to the limitations in FAR 1.301 and consist of--

(a) Published and codified Department-wide regulations which implement or supplement FAR policies and procedures and directly govern the contracting relationship between the Department's bureaus and offices and existing or potential contractors;

(b) Published and codified bureau-wide regulations which supplement FAR policies and procedures and govern the relationship between a bureau and existing or potential contractors to satisfy specific and unique needs of the particular bureau;

(c) Unpublished Department-wide internal guidance related to administrative implementation of FAR policies and procedures which does not directly affect existing or potential contractors; and

(d) Unpublished bureau-wide internal guidance which is necessary for administrative implementation of FAR or DIAR System requirements at organizational levels.

1401.303 Publication and codification.

(a) Implementing and supplementing regulations issued under the DIAR System are codified under Chapter 14 in Title 48, Code of Federal Regulations and conform to the requirements in FAR 1.303.

(b) Department-wide regulations (see 1401.302(a)) are assigned Parts 1401 through 1479 under 48 CFR.

(c) Bureau-wide regulations (see 1401.302(b)) are assigned Parts 1480-1499 under 48 CFR as follows—

1480-1481	Bureau of Indian Affairs
1482	Office of the Secretary
1483	Bureau of Reclamation
1484	Bureau of Land Management
1485	Bureau of Mines
1486	Geological Survey
1487	Office of Surface Mining
1488	Minerals Management Service
1489	National Park Service
1490	Fish and Wildlife Service
1491-1499	[Reserved]

(d) Public participation in the promulgation of the acquisition regulations which are published in the FEDERAL REGISTER shall follow the Department's rulemaking procedures prescribed in Part 318, Chapter 6 of the Departmental Manual (318 DM 6) and the procedures in FAR Subpart 1.5.

(e) Copies of Department-wide and bureau-wide acquisition regulations and Department-wide internal guidance may be obtained from the Office of Acquisition and Property Management, Office of the Secretary, U.S. Department of the Interior, Washington, DC 20240.

[49 FR 14252, Apr. 10, 1984, as amended at 51 FR 41965, Nov. 20, 1986]

1401.304 Agency control and compliance procedures.

(a) The DIAR system is under the direct oversight and control of the Director, Office of Acquisition and Property Management, who is responsible for review and preparation for issuance of all Department-wide and bureau-wide acquisition regulations published in the FEDERAL REGISTER to assure compliance with FAR Part 1. Review procedures are contained in Part 401 of the Departmental Manual (401 DM).

(b) The Director, Office of Acquisition and Property Management is also responsible for review and issuance of unpublished, Department-wide internal guidance under the DIAR System.

(c) Heads of contracting activities are responsible for establishment and implementation of formal procedures for oversight and control of all unpublished bureau-wide internal guidance issued to implement FAR or DIAR requirements. These procedures shall be reviewed and approved by the Director, Office of Acquisition and Property Management and shall include—

(1) Provisions for centralized issuance of all guidance and instructions using a directives system;

(2) Methods for periodic review and updating of all issuances;

(3) Distribution processes which assure timely receipt by all affected contracting offices; and

(4) Provisions for maintaining compliance with FAR 1.304.

(d) The Director, Office of Acquisition and Property Management is responsible for evaluating coverage under the DIAR System to determine applicability to other agencies and for recommending coverage to the FAR Secretariat for inclusion in the FAR.

(e) Recommendations for revision of existing FAR coverage or new FAR coverage shall be submitted by the head of the contracting activity to the Director, Office of Acquisition and Property Management for further action.

Subpart 1401.6—Contracting Authority and Responsibilities

1401.601 General.

(a) The authority and responsibility vested in the Secretary to contract for authorized supplies and services is delegated to Assistant Secretaries.

(b) The contracting authority and responsibility delegated to Assistant Secretaries may be redelegated to heads of bureaus and offices under their supervision in accordance with Part 200, Chapter 3 of the Departmental Manual (200 DM 3). Such redelegations are published in bureau chapters of the Part 200 series of the Departmental Manual.

(c) Bureau heads and assistant or associate heads thereof (known as heads of contracting activities as defined in 1402.1) may redelegate contracting authority only as prescribed in 1401.603.

1401.602 Contracting officers.

1401.602-1 Authority.

Information on the limits of contracting officers' authority shall be maintained by the head of the contracting activity as required in FAR 1.602-1. The Office of Acquisition and Property Management shall also maintain this information.

1401.603 Selection, appointment and termination of appointment.

1401.603-1 General.

Heads of contracting activities (see 1402.1) are authorized to select and appoint contracting officers and terminate their appointment as prescribed in the Department's "Contracting Officers' Warrant System Manual". Copies of the manual may be obtained upon request from the Office of Acquisition and Property Management, Office of the Secretary, U.S. Department of the Interior, Washington, DC 20240.

1401.670 Appointment and termination of appointment of contracting officers' representatives.

1401.670-1 General.

A contracting officer may select and appoint an individual to act as an authorized representative in the administration of a contract based on the technical, professional and administrative qualifications of the individual.

1401.670-2 Appointment.

(a) Contracting officers' representatives shall be appointed in writing by the contracting officer. The appointment shall state the scope and limitations of authority (see 1401.670-3) and identify the contract(s) which the representative will administer.

(b) Changes in the scope or limitations of authority shall be made by written amendments to the existing appointment or by issuance of a new appointment.

(c) A copy of the appointment shall be promptly forwarded to the contractor after issuance by the contracting officer.

1401.670-3 Limitations.

Each appointment of a contracting officers' representative made by the contracting officer shall clearly state that the representative is not authorized under any circumstances to—

(a) Award, agree to, or execute any contract, contract modification, or notice of intent;

(b) Obligate, in any way, the payment of money by the Government;

(c) Make a final decision on any contract matter which is subject to the clause at FAR 52.233-1, Disputes; or

(d) Terminate, for any cause, the contractor's right to proceed.

1401.670-4 Termination.

Termination of a contracting officer's representative appointment shall be made in writing by the contracting officer and shall state the date such termination is effective. A copy of the termination shall be promptly forwarded to the contractor after issuance by the contracting officer.

PART 1403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1403.1—Safeguards

Sec.

1403.101 Standards of conduct.
1403.101-3 Agency regulations.

Subpart 1403.2—Contractor Gratuities to Government Personnel

1403.203 Reporting suspected violations of the Gratuities clause.
1403.203-70 Procedures.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

SOURCE: 49 FR 14254, Apr. 10, 1984, unless otherwise noted.

Subpart 1403.1—Safeguards

1403.101 Standards of conduct.

1403.101–3 Agency regulations.

Department of the Interior regulations governing the conduct and responsibilities of regular and special employees are contained in 43 CFR Part 20. Authorized exceptions to FAR 3.101-2 are contained in 43 CFR 20.735-7 and 20.735-8.

Subpart 1403.2—Contractor Gratuities to Government Personnel

1403.203 Reporting suspected violations of the Gratuities clause.

1403.203–70 Procedures.

(a) *Action Official.* The Director, Office of Acquisition and Property Management, is the Departmental official authorized to take action pursuant to FAR 3.204(c) against a contractor if it is determined that a violation of the clause at FAR 52.203-3, Gratuities, has occurred. This authority may not be delegated.

(b) *Referral.* Whenever a suspected violation of the clause at FAR 52.203-3, Gratuities, becomes known to a Department employee, the matter shall be reported to the cognizant contracting officer or the contracting officer's supervisor, as appropriate. The report shall be in writing and shall clearly state the circumstances surrounding the incident or incidents where it is alleged that the contractor offered or gave a gratuity to a Department employee and intended by the gratuity to obtain a contract or favorable treatment under a contract. The date(s), location(s) and name(s) of all parties involved in the incident shall be included in the report. The report shall also include a recommended course of action in accordance with FAR 3.204(c) and shall be submitted through the head of the contracting activity to the Director, Office of Acquisition and Property Management for disposition.

(c) *Notice to contractor.* After review of the report and consultation with the Office of the Solicitor and Office of the Inspector General, as appropriate, the Director, Office of Acquisition and Property Management shall determine further action to be taken. If required, the contractor shall be provided with a formal notice which summarizes the events involving the suspected violation and affords the contractor the opportunity to take the action(s) listed under FAR 3.204(b). The notice shall contain a time limit for reply and shall be sent by certified mail return receipt requested.

(d) *Decision.* Based on the contractor's response to the notice, the results of any further discussion with the contractor, its counsel or witnesses, the review of additional documentary evidence, and other pertinent information, the Director, Office of Acquisition and Property Management shall make a final and binding decision on the action to be taken in accordance with FAR 3.204(c) and shall provide the contractor with a formal notice of such action. If the decision involves termination of a contract (see FAR 3.204(c)(1)) the head of the contracting activity shall be responsible for implementing the decision.

PART 1404—ADMINISTRATIVE MATTERS

Subpart 1404.4—Safeguarding Classified Information Within Industry

Sec.
1404.402 General.

Subpart 1404.7—Contractor Records Retention

1404.701 Purpose.
1404.702 Applicability.

Subpart 1404.8—Contract Files

1404.804 Closeout of contract files.
1404.804-70 Release of claims.

Subpart 1404.70—Indian Preference

1404.7000 Scope of subpart.
1404.7001 Definitions.
1404.7002 Statutory requirements.
1404.7003 Applicability and contract clause.
1404.7004 Compliance enforcement.
1404.7005 Tribal preference requirements.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and 5 U.S.C. 301.

SOURCE: 49 FR 14254, Apr. 10, 1984, unless otherwise noted.

Subpart 1404.4—Safeguarding Classified Information Within Industry

1404.402 General.

(a) The Department of the Interior has entered into an agreement with the Department of Defense (DOD) to be covered by the Defense Industrial Security Program (DISP). The agreement is contained in Appendix 1, Part 443, Chapter 1 of the Department Manual (443 DM 1).

(b) Classified acquisitions or contracts (see FAR 4.401) shall be subject to the instructions contained in the DOD publications listed in FAR 4.402(b).

Subpart 1404.7—Contractor Records Retention

1404.701 Purpose.

This subpart contains additional record retention requirements of the Department of the Interior.

1404.702 Applicability.

In addition to the clauses listed under FAR 4.702(a), FAR Subpart 4.7 shall apply to records generated under contracts containing the clause at 1452.215-70, Examination of Records by the Department of the Interior.

Subpart 1404.8—Contract Files

1404.804 Closeout of contract files.

1404.804-70 Release of claims.

(a) The contracting officer shall insert the clause at 1452.204-70, Release of Claims, in all construction contracts which exceed $25,000 and in all cost-reimbursement contracts which exceed $25,000. A release of claims clause may be inserted in other types of contracts when the contracting officer determines that the release is necessary to protect the interests of the Government.

(b) Form DI-137, Release of Claims (see 1453.204-70), shall be used for obtaining a release of claims.

Subpart 1404.70—Indian Preference

1404.7000 Scope of subpart.

This subpart prescribes policies and procedures for implementation of section 7(b) of the Indian Self-Determination and Education Assistance Act (Public Law 93-638, 88 Stat. 2205, 25 U.S.C. 450e(b)).

1404.7001 Definitions.

For purposes of this subpart the following definitions shall apply:

"Indian" means a person who is a member of an Indian Tribe. If the contractor has reason to doubt that a person seeking employment preference is an Indian, the contractor shall grant the preference but shall require the individual within thirty (30) days to provide evidence from the Tribe concerned that the person is a member of the Tribe.

"Indian organization" means the governing body of any Indian Tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974 (88 Stat. 77; 25 U.S.C. 1451).

"Indian-owned economic enterprise" means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit provided that such Indian ownership shall constitute not less than 51 percent of the enterprise.

"Indian reservation" includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 *et seq.*).

"Indian Tribe" means an Indian Tribe, band, nation, or other recognized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"On or near an Indian reservation" means on a reservation or the distance within that area surrounding an Indian reservation(s) that a person seeking employment could reasonably be expected to commute to and from in the course of a work day.

1404.7002 Statutory requirements.

Section 7(b) of the Indian Self-Determination and Education Assistance Act requires that any contract or subcontract entered into pursuant to that Act, the Act of April 16, 1934 (48 Stat. 596; 25 U.S.C. 452), as amended, (the Johnson-O'Malley Act), or any other Act authorizing contracts with Indian organizations or for the benefit of Indians shall require that, to the greatest extent feasible, (a) preferences and opportunities for training and employment in connection with the administration of such contracts shall be given to Indians, and (b) preference in the award of subcontracts in connection with the administration of such contracts shall be given to Indian organizations and to Indian-owned economic enterprises as defined in Section 3 of the Indian Financing Act of 1974 (Sec. 3, Pub. L. 93-262; 88 Stat. 77; 25 U.S.C. 1452).

1404.7003 Applicability and contract clause.

(a) The contracting officer shall insert the clause at 1452.204-71, Indian Preference—Department of the Interior, in solicitations issued and contracts awarded by (1) the Bureau of Indian Affairs, except solicitations issued and contracts awarded pursuant to Title I and to Indian Tribes and Indian Organizations under Title II of Pub. L. 93-638 (25 U.S.C. 450 *et seq.*, and 25 U.S.C. 455 et seq., respectively), (2) a contracting activity other than the Bureau of Indian Affairs when the contract is entered into pursuant to an act specifically authorizing contracts with Indian organizations and (3) a contracting activity other than the Bureau of Indian Affairs where the work to be performed is specifically for the benefit of Indians and is in addition to any incidental benefits which might otherwise accrue to the general public.

(b) The contracting officer shall insert the clause at 1452.204-72, Indian Preference Program—Department of the Interior, in all solicitations issued and contracts awarded by a contracting activity which may exceed $50,000, which contain the clause required by paragraph (a) of this section and where it is determined by the contracting officer, prior to solicitation, that the work under the contract will be performed in whole or in part on or near an Indian reservation(s). The Indian Preference Program clause may also be included in solicitations issued and contracts awarded by a contracting activity which may not exceed $50,000, but which contain the clause required by paragraph (a) of this section and which, in the opinion of the contracting officer, offer substantial opportunities for Indian employment, training or subcontracting.

1404.7004 Compliance enforcement.

(a) The contracting officer is responible for conducting periodic reviews of the contractor to ensure compliance with the requirements of the clauses prescribed in 1404.7003. There reviews may be conducted with the assistance of the Indian Tribe(s) concerned.

(b) Complaints of noncompliance with the requirements of the clauses prescribed under 1404.7003 which are received in writing by the contracting activity shall be promptly investigated by the contracting officer and a written disposition of the complaint shall be prepared.

1404.7005 Tribal preference requirements.

(a) Where the work under a contract is to be performed on an Indian reservation, the contracting officer may supplement the clause at 1452.204-72, Indian Preference Program—Department of the Interior, by adding specific Indian preference requirements of the Tribe on whose reservation the work is to be performed. The supplemental requirements shall be jointly developed for the contract by the contracting officer and the Tribe. Supplemental preference requirements must represent a further implementation of the requirements of section 7(b) of Pub. L. 93-638 and must be approved by the Office of the Solicitor for legal sufficiency before being added to a solicitation and resultant contract. Any supplemental preference requirements to be added to the clause at 1452.204-72 shall be included in the solicitation and clearly identified in order to ensure uniform understanding of the additional requirements by all prospective bidders or offerors.

(b) Nothing in these regulations shall be interpreted to preclude Tribes from independently developing and enforcing their own tribal preference requirements. Such independently developed tribal preference requirements shall not, except as provided in (a) of this section, become a requirement in contracts covered under this Subpart 1404.70 and must not hinder the Government's right to award contracts and to administer their provisions.

PART 1405—PUBLICIZING CONTRACT ACTIONS

Subpart 1405.2—Synopses of Proposed Contract Actions

1405.202 Exceptions.
1405.207 Preparation and transmittal of synopses.

AUTHORITY: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1405.2—Synopses of Proposed Contract Actions

1405.202 Exceptions.

The Assistant Secretary—Policy, Budget and Administration is authorized to make the determination in FAR 5.202(b). A written determination documenting the reasons why advance notice is not appropriate or reasonable shall be submitted by the head of the contracting activity to the Director, Office of Acquisition and Property Management for further action including communication with the officials listed in FAR 5.202(b).

[51 FR 41965, Nov. 20, 1986]

1405.207 Preparation and transmittal of synopses.

(a) In addition to the information required in FAR 5.207, each synopsis of a proposed contract action under FAR Subpart 6.3 shall include:

(1) A clear description of specific contractor qualifications or capabilities required for the product or service to meet the Government's minimum needs; and

(2) Information to be provided by prospective contractors and all factors to be used in evaluating this information, in order to determine whether other sources can meet the Government's needs.

(b) In the event the information in paragraph (a)(1) or (a)(2) of this section is too lengthy to be included in the synopsis, the synopsis shall identify the office where this information may be examined or obtained.

[51 FR 41965, Nov. 20, 1986]

PART 1406—COMPETITION REQUIREMENTS

Subpart 1406.5—Competition Advocates

1406.501 Requirement.
1406.502 Duties and responsibilities.

AUTHORITY: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1406.5—Competition Advocates

1406.501 Requirement.

(a) The competition advocate for the Department of the Interior is the Chief, Division of Acquisition and Grants, Office of Acquisition and Property Management.

(b) Competition advocates for each bureau and office shall be as designated by the Assistant Secretary—Policy, Budget and Administration.

[51 FR 41965, Nov. 20, 1986]

1406.502 Duties and responsibilities.

(a) The Chief, Division of Acquisition and Grants, Office of Acquisition and Property Management is responsible for preparing and submitting the annual report required by FAR 6.502(a)(3).

(b) The Director, Office of Acquisition and Property Management is responsible for preparing the annual report to Congress required by section 2732 of Pub. L. 98-369. The report shall be submitted to the Assistant Secretary—Policy, Budget and Administration for transmittal to each House of Congress. Bureau competition advocates shall furnish certain information, as may be required, to assist the Director, Office of Acquisition and Property Management in preparing the report.

[51 FR 41965, Nov. 20, 1986]

SUBCHAPTER B—ACQUISITION PLANNING

PART 1407—ACQUISITION PLANNING

Subpart 1407.3—Contractor Versus Government Performance

Sec.

1407.302 General.
1407.307 Appeals.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1407.3—Contractor Versus Government Performance

1407.302 General.

The Department has implemented the requirements of OMB Circular A-76 and FAR Subpart 7.3 in Part 403 of the Departmental Manual (403 DM).

[49 FR 14256, Apr. 10, 1984]

1407.307 Appeals.

The Department's appeals procedures required by OMB Circular A-76 and FAR 7.307 are codified in 43 CFR Part 4, Subpart M.

[49 FR 14256, Apr. 10, 1984]

PART 1409—CONTRACTOR QUALIFICATIONS

Subpart 1409.4—Debarment, Suspension and Ineligibility

Sec.

1409.400 Scope of subpart.
1409.404 Consolidated list of debarred, suspended and ineligible contractors.
1409.405 Effect of listing.
1409.405-1 Continuation of current contracts.
1409.406 Debarment.
1409.406-1 General.
1409.406-3 Procedures.
1409.407 Suspension.
1409.407-1 General.
1409.407-3 Procedures.

AUTHORITY: 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

SOURCE: 49 FR 14256, Apr. 10, 1984, unless otherwise noted.

Subpart 1409.4—Debarment, Suspension and Ineligibility

1409.400 Scope of subpart.

As required by FAR 9.402(c), this subpart prescribes Departmental policies and procedures governing the debarment and suspension of contractors, the listing of the debarred and suspended contractors, and dissemination of this listing.

1409.404 Consolidated list of debarred, suspended and ineligible contractors.

(a) The Division of Acquisition and Grants, Office of Acquisition and Property Management, is responsible for accomplishing the actions required in FAR 9.404(c).

(b) Monthly issues of the consolidated list shall be disseminated by the heads of contracting activities to all contracting offices after receipt from GSA.

(c) Weekly supplements to monthly lists shall be furnished to each bureau headquarters office by the Division of Acquisition and Grants, Office of Acquisition and Property Management. Each bureau shall maintain list supplements at a central location and issue instructions requiring contracting officers to contact this location in order to obtain current information and ensure effective use of the list as required by FAR 9.405.

1409.405 Effect of listing.

The Director, Office of Acquisition and Property Management, is authorized to make the determinations listed in FAR 9.405(a). Requests for such determinations shall be submitted by the head of the contracting activity to the Director, Office of Acquisition and Property Management.

1409.405-1 Continuation of current contracts.

The Director, Office of Acquisition and Property Management, is authorized to take action listed in FAR 9.405-1.

1409.406 Debarment.

1409.406-1 General.

(a) The Director, Office of Acquisition and Property Management is the debarring official for the Department and is authorized to debar a contractor for any of the causes in FAR 9.406-2, using the procedures in 1409.406-3.

(b) The Director, Office of Acquisition and Property Management is authorized to make the statement regarding debarment by another agency debarring official under the conditions in FAR 9.406-1(c).

1409.406-3 Procedures.

(a) *Investigation and referral.* Whenever a cause for debarment, as listed in FAR 9.406-2, becomes known to a Department employee, the matter shall be referred to the head of the contracting activity involved. The head of the contracting activity shall consult with the Office of the Solicitor and the Office of Inspector General, as appropriate, and submit a formal recommendation which documents the cause for debarment to the Director, Office of Acquisition and Property Management.

(b) *Notice of proposal to debar.* Based upon review of the recommendation to debar and consultation with the Office of the Solicitor and Office of Inspector General, as appropriate, the Director, Office of Acquisition and Property Management shall initiate proposed debarment by taking the actions listed in FAR 9.406-3(c) and advising the contractor of the Department's rules under this Subpart 1409.4.

(c) *Factfinding proceedings.* For actions listed under FAR 9.406-3(b)(2), the Director, Office of Acquisition and Property Management shall afford the contractor the opportunity to appear at a hearing as required by FAR 9.406-3(b)(2)(i). The hearing shall be conducted by the Director, Office of Acquisition and Property Management, or designee, and shall be held at a location convenient to the parties concerned as determined by the Director and on a date and time stated. Subject to the provisions of 43 CFR Part 1, the contractor and any specifically named affiliates, may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings shall be conducted expeditiously and in such manner that each party will have a full opportunity to present all information considered pertinent to the proposed debarment. A transcript of the proceedings shall be made available to the contractor under the conditions in FAR 9.406-3(b)(2)(ii).

(d) *Decision and notice.* The Director, Office of Acquisition and Property Management shall make a decision on imposing debarment in accordance with the procedures in FAR 9.406-3(d) and the conditions in FAR 9.406-4 and 9.406-5. Notice of the decision shall be provided to the contractor and any affiliates involved in accordance with the procedures in FAR 9.406-3(e).

1409.407 Suspension.

1409.407-1 General.

(a) The Director, Office of Acquisition and Property Management is the suspension official for the Department and is authorized to suspend a contractor for any of the causes in FAR 9.407-2, using the procedures in 1409.407-3.

(b) The Director, Office of Acquisition and Property Management is authorized to make the statement regarding suspension by another agency suspending official under the conditions in FAR 9.407-1(d).

1409.407-3 Procedures.

(a) *Investigation and referral.* Whenever a cause for suspension, as listed in FAR 9.407-2, becomes known to a Department employee, the matter shall be referred to the head of the contracting activity involved. The head of the contracting activity shall consult with the Office of the Solicitor and the Office of Inspector General, as appropriate, and submit a formal recommendation which documents the cause for suspension to the Director, Office of Acquisition and Property Management.

(b) *Notice of suspension.* Based upon review of the recommendation to suspend and consultation with the Office of the Solicitor and the Office of Inspector General, as appropriate, the Director, Office of Acquisition and Property Management shall initiate suspension by taking the actions listed in FAR 9.407-3(c) and advising the contractor of the Department's rules under this Subpart 1409.4.

(c) *Factfinding proceedings.* For actions listed under FAR 9.407-3(b)(2), the Director, Office of Acquisition and Property Management shall afford the contractor the opportunity to appear at a hearing as required by FAR 9.407-3(b)(2)(i). The hearing shall be conducted under the conditions in 1409.406-3(c).

(d) *Suspension decision.* The Director, Office of Acquisition and Property Management shall make a final decision on suspension as prescribed in FAR 9.407-3(d). Notice of the decision shall be provided to the contractor and any affiliates involved in accordance with the procedures in FAR 9.407-3(d)(4).

PART 1410—SPECIFICATIONS, STANDARDS AND OTHER PURCHASE DESCRIPTIONS

Sec.
1410.004 Selecting specifications or descriptions for use.
1410.004-70 Brand name products or equal.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

1410.004 Selecting specifications or descriptions for use.

(a) In accordance with FAR 10.004(b)(2), purchase descriptions shall not specify a product, or specific feature of a product, peculiar to a manufacturer unless it is determined in writing by the office initiating the purchase request that the product, or specific product feature, is essential to the Government's requirements and other similar products will not meet their requirements. This determination shall be in writing and shall accompany the purchase requisition.

(b) A "brand name or equal" purchase description shall be used only under the conditions listed in FAR 10.004(b)(3) and in accordance with the policies and procedures in 1410.004-70.

(c) Bureaus and offices shall be responsible for requiring adequate packing, packaging, and marking requirements when acquiring supplies in accordance with FAR 10.004(e).

[49 FR 14257, Apr. 10, 1984]

1410.004-70 Brand name products or equal.

(a) *Limitations on use.* The identification of a requirement in a purchase description by use of one or more brand name products followed by the words "or equal" shall be used only under the conditions listed in FAR 10.004(b)(3). A "brand name product" means a current commercial product of a manufacturer described by its brand name, make, model number, catalog designation or other description by which it is regularly offered for sale to the public in the commercial market place.

(b) *Solicitation requirements.* (1) "Brand name or equal" purchase descriptions in solicitations shall identify salient characteristics of the product (see subparagraph (b)(2) of this 1410.004-70) and contain the following information to describe the specific item—

(i) Identification of the item by generic descriptions;

(ii) Make, model number, catalog designation (or other description), and identification of commercial catalog where it is listed; and

(iii) Name of manufacturer, producer, or distributor of the item and complete address.

(2) In accordance with the policy in FAR 10.002, whenever a "brand name or equal" purchase description is used, bidders/offerors shall be given the opportunity to offer products equal to the brand name if those products (including modifications thereto) satisfy the minimum needs of the Government. Therefore, all salient characteristics of the brand name or equal product which are determined by the office initiating the purchase request to be essential to the Government's minimum needs shall be separately identified under the heading of "salient characteristics" and included in the purchase description contained in the solicitation so the bidder/offeror un-

derstands the information to be submitted when offering an "equal" product for evaluation. In addition, the following statement shall be included at the end of each "brand name or equal" description in a solicitation for a bidder/offeror to identify its "equal" product:

Bidders/Offerors (select one) proposing to furnish an "equal" product, in accordance with the "Brand Name or Equal" provision of this solicitation, shall insert the following description for the product.

Bidding on/proposing:
Manufacturer's name: ————————
Address: ————————
Product name (if any): ————————
Product make, model, or catalog description:
————————

Bidders/offerors shall also be responsible for submitting all additional information on the above product necessary for the Government to determine whether the product offered meets the salient characteristics of the "brand name" as listed in the solicitation.

(3) In addition, the provision at 1452.210-70, Brand Name or Equal—Department of the Interior, shall be inserted by the contracting officer in solicitations where a "brand name or equal" purchase description is used.

[49 FR 14257, Apr. 10, 1984]

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1413—SMALL PURCHASES AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 1413.1—General

Sec.
1413.103 Policy.

Subpart 1413.4—Imprest Fund

1413.404 Conditions for use.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

SOURCE: 49 FR 14257, Apr. 10, 1984, unless otherwise noted.

Subpart 1413.1—General

1413.103 Policy.

Small purchases and other simplified purchase methods shall be conductd in accordance with FAR Part 13 and the Department's "Sources of Supply and Small Purchase Handbook" or equivalent bureau procedures approved by the Director, Office of Acquisition and Property Management. Copies of the Handbook may be obtained upon written request from the Office of Acquisition and Property Management, Office of the Secretary, U.S. Department of the Interior, Washington, DC 20240.

Subpart 1413.4—Imprest Fund

1413.404 Conditions for use.

The Department of the Treasury has approved for the Department dollar limits other than those in FAR 13.404(a) for small purchase transactions using imprest funds. Imprest funds may be used for small purchases when the transaction does not exceed $300 under normal conditions or $500 under emergency conditions.

PART 1414—SEALED BIDDING

Subpart 1414.4—Opening of Bids and Award of Contract

Sec.
1414.404 Rejection of bids.
1414.404-1 Cancellation of invitations after opening.
1414.406 Mistakes in bid.
1414.406-3 Other mistakes disclosed before award.
1414.407 Award.
1414.407-8 Protest against award.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1414.4—Opening of Bids and Award of Contract

1414.404 Rejection of bids.

[51 FR 41965, Nov. 20, 1986]

1414.404-1 Cancellation of invitations after opening.

The chief of the contracting office is authorized to make the written determination in FAR 14.404-1(c).

[51 FR 41965, Nov. 20, 1986]

1414.406 Mistakes in bids.

[49 FR 14258, Apr. 10, 1984]

1414.406-3 Other mistakes disclosed before award.

(a) The Director, Office of Acquisition and Property Management is authorized to make the administrative determinations under FAR 14.406-3, except as set forth in (b) below.

(b) If a bidder requests permission to withdraw a bid rather than correct it, and (1) the evidence is clear and convincing as to the mistake or (2) the evidence reasonably supports the existence of a mistake but is not clear and convincing, the chief of the contracting office is authorized to make a written determination permitting the bidder to withdraw the bid after review in accordance with bureau procedures and concurrence by the appropriate Office of the Solicitor. (See FAR 14.406-3 (c) and (e).) Copies of all determinations made pursuant to this authority must be promptly transmitted to the Director, Office of Acquisition and Property Management. If the evidence of the intended bid is clear and convincing, even though the bidder has not requested permission to correct the bid, the case shall be processed in accordance with (d) below.

(c) As required by FAR 14.406-3(f), each proposed administrative determination shall have the concurrence of the Office of the Solicitor prior to submission to the Director, Office of Acquisition and Property Management.

(d) Suspected or alleged mistakes in bids shall be processed in accordance with the requirements of FAR 14.406-3(g). Except as prescribed in (b) above, the contracting officer shall submit a report together with the supporting data described in FAR 14.406-3(g)(3) through the head of the contracting activity to the Director, Office of Acquisition and Property Management. Incomplete reports may result in a delay in obtaining a determination.

(e) The Director, Officer of Acquisition of Property Management is responsible for maintaining records of administrative determinations as required in FAR 14.406-3(h).

[49 FR 14258, Apr. 10, 1984]

1414.407 Award.

See Subpart 1433.1—Protests.

[50 FR 38658, Sept. 24, 1985]

1414.407-8 Protest against award.

See Subpart 1433.1—Protests.

[51 FR 8830, Mar. 14, 1986]

PART 1415—CONTRACTING BY NEGOTIATION

Subpart 1415.1—General Requirements for Negotiation

Sec.
1415.106 Contract clauses.
1415.106-1 Examination of records by the Department of the Interior clause.

Subpart 1415.4—Solicitation and Receipt of Proposals and Quotations

1415.413 Disclosure and use of information before award.
Sec.
1415.413-70 Department of the Interior procedures.

Subpart 1415.5—Unsolicited Proposals

1415.506 Agency procedures.

Subpart 1415.6—Source Selection

1415.607 Disclosure of mistakes before award.
1415.608 Proposal evaluation.

Subpart 1415.8—Price Negotiation

1415.803 General.
1415.804 Cost or pricing data.
1415.804-3 Exceptions from or waiver of submission of certified cost or pricing data.

Subpart 1415.9—Profit

1415.902 Policy.
1415.905 Profit analysis factors.
1415.905-1 Common factors.
1415.905-70 Calculation of profit objective.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

SOURCE: 49 FR 14259, Apr. 10, 1984, unless otherwise noted.

Subpart 1415.1—General Requirements for Negotiation

1415.106 Contract clauses.

1415.106-70 Examination of records by the Department of the Interior clause.

The contracting officer shall insert the clause at 1452.215-70, Examination of Records by the Department of the Interior, in all contracts requiring the clause a FAR 52.215-1, Examination of Records by the Comptroller General, as prescribed in FAR 15.106-1(b).

Subpart 1415.4—Solicitation and Receipt of Proposals and Quotations

1415.413 Disclosure and use of information before award.

1415.413-70 Department of the Interior procedures.

(a) *General.* This section establishes alternate requirements and procedures, which shall be used instead of those prescribed in FAR 15.413, for the use and disclosure of trade secret information and confidential commercial and financial information contained in solicited proposals.

(b) *Definitions.* For the purposes of this section and the Freedom of Information Act (5 U.S.C. 552), the following terms shall have the meanings set forth below:

(1) "Trade Secret" means an unpatented, secret, commercially valuable plan, appliance, formula, or process, which is used for the making, preparing, compounding, treating or processing of articles or materials which are trade commodities.

(2)(i) "Confidential commercial or financial information" means any business information (other than trade secrets) which is exempt from the mandatory disclosure requirement of the Freedom of Information Act (5 U.S.C. 552).

(ii) Exemptions from mandatory disclosure which may be applicable to business information contained in proposals includes exemption (4), which covers "commercial and financial information obtained from a person and privileged or confidential," and exemption (9), which covers "geological and geophysical information, including maps, concerning wells."

(c) *Marking of solicited proposals.* A solicited proposal may contain trade secrets or confidential commercial or financial information which the offeror, or its subcontractors, perfers not to be disclosed to the public or used by the Government for any purpose other than evaluation of the proposal. To notify the Government of trade secrets and confidential commercial or financial information contained in a proposal, offerors shall mark the cover page of the proposal and each affected page of the proposal with the legends specified in the solicitation provision at 1452.215-71, Use and Disclosure of Proposal Information—Department of the Interior. Contracting officers and other government personnel evaluating a proposal shall not refuse to consider the proposal because it contains information identified as trade secret information or confidential commercial or financial information.

(d) *Use of information.* (1) Information in a proposal identified by an offeror as trade secret information or confidential commercial and financial information shall be used by the Government only for the purpose of evaluating the proposal, except that (i) if a contract is awarded to the offeror as a result of or in connection with submission of the proposal, the Government shall have the right to use the information as provided in the contract and (ii) if the same information is obtained from another source without restriction it may be used without restriction.

(2)(i) If a request under the Freedom of Information Act seeks access to information in a proposal identified as trade secret information or confidential commercial and financial information, full consideration will be given to an offeror's view that the information constitutes trade secrets or confidential commercial or financial information.

(ii) The offeror will also be promptly notified of the request and given an opportunity to provide additional evidence and argument in support of its position, unless administratively unfeasible to do so. If it is determined that information claimed by the offeror to be trade secret information or confidential commercial or financial information is not exempt from disclosure under the Freedom of Information Act, the offeror will be notified of this determination prior to disclosure of the information.

(e) *Failure to mark.* The Government assumes no liability for the disclosure or use of information contained in a proposal if not marked in accordance with paragraph (c) of this section. If a request under the Freedom of Information Act is made for information in a proposal not marked in accordance with paragraph (c) of this section, the offeror concerned shall be notified promptly of the request and given an opportunity to provide its position to the Government. However, failure of an offeror to mark information contained in a proposal as trade secret information or confidential commercial and financial information will be treated by the Government as evidence that the information is not exempt from disclosure under the Freedom of Information Act, absent a showing that the failure to mark was due to unusual or extenuating circumstances, such as a showing that the offeror had intended to mark, but that markings were omitted from the offeror's proposal due to clerical error.

(f) *Solicitation provision.* The provision at 1452.215-71, Use and Disclosure of Proposal Information—Department of the Interior shall be inserted in all requests for proposals and requests for quotations.

(g) *Government handling notice.* The following Government notice shall be placed by the contracting officer on the cover page of each solicited proposal upon receipt in order to ensure proper handling. This is a Government notice for internal handling purposes and does not affect any obligations or rights of the Government may have with regard to the use or disclosure of information contained in the proposal or quotation:

GOVERNMENT NOTICE FOR HANDLING PROPOSALS

This proposal shall be used and disclosed for evaluation purposes only, and a copy of this Government notice shall be applied to any reproduction or abstract thereof. Any restrictive legends used by the offeror to mark trade secrets or confidential commercial or financial information in accordance with solicitation provision, "Use and Disclosure of Proposal Information—Department of the Interior", shall also be strictly complied with.

Subpart 1415.5—Unsolicited Proposals

1415.506 Agency procedures.

Procedures for the disposition of unsolicited proposals as required by FAR 15.506 are contained in the Department's "Handbook for Submission of Unsolicited Proposals". Copies of the handbook may be obtained upon request from the Office of Acquisition and Property Management, Department of the Interior, Washington, DC 20240.

Subpart 1415.6—Source Selection

1415.607 Disclosure of mistakes before award.

The head of the contracting office is authorized to make the determination permitting proposal correction in accordance with the conditions in FAR 15.607(c)(3) after approval of the determination by the Office of the Solicitor has been obtained.

1415.608 Proposal evaluation.

The chief of the contracting office is authorized to make the determination in FAR 15.608(b).

[51 FR 41965, Nov. 20, 1986]

Subpart 1415.8—Price Negotiation

1415.803 General.

(a) Where the contractor insists on a price or demands a profit or fee that the contracting officer considers unreasonable, and the contracting officer has taken all authorized actions to resolve the matter (see FAR 15.803), the contract action shall be referred to the head of the contracting activity or designee at a level higher than the contracting officer, for final resolution.

(b) Resolution under (a) above shall be documented, signed by the head of the contracting activity or designee, and included in the contract file.

1415.804 Cost or pricing data.

1415.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(a) The chief of the contracting office is authorized to approve the contracting officer's finding supporting the unreasonableness of the lowest price (see FAR 15.804-3(b)(2)(iii).

(b) The Director, Office of Acquisition and Property Management is authorized to waive the requirement for submission of certified cost or pricing data. (See FAR 15.804-3(i).)

(c) Requests for waiver under paragraph (b) of this section shall be submitted in writing by the head of the contracting activity and shall contain a statement as to the reasons the waiver is necessary and the efforts made to obtain the data from the contractor or prospective contractor.

Subpart 1415.9—Profit

1415.902 Policy.

(a) It is the Department's policy to use a structured approach for determining the profit or fee prenegotiation objective in acquisition actions that require cost analysis based on the profit analysis factors in FAR 15.905, as implemented and supplemented in 1415.905.

(b) The following types of acquisitions are exempt from the requirements of the structured approach in 1415.905, but the contracting officer shall comply with FAR 15.905-1 when analyzing profit for these contracts or actions—

(1) All actions which do not require cost analysis;

(2) Architect-engineer contracts;

(3) Construction contracts;

(4) Contracts primarily requiring delivery of material supplied by subcontractors;

(5) Termination settlements; and

(6) Cost-plus-award-fee contracts.

(c) In developing a profit or fee objective, the contracting officer shall comply with the requirements in FAR 15.903.

(d) When profit analysis is required, any prenegotiation cost objective established for the cost of money for facilities capital (see FAR 31.205-10) shall be subtracted from the overall cost objective established for the subfactor in 1415.905-1(a)(3) before calculation of the profit objective (see 1415.905-70(b)(1)).

(e) The head of the contracting activity is responsible for establishing procedures to ensure compliance with this subpart.

[49 FR 14259, Apr. 10, 1984, as amended at 51 FR 41965, Nov. 20, 1986]

1415.905 Profit-analysis factors.

(a) The Department uses the factors listed in FAR 15.905-1 in its structured approach. 1415.905-1 contains additional guidance on evaluating each factor and subfactor for purposes of determining a weighted profit or fee for the factor or subfactor.

(b) The Department has added another subfactor to those prescribed for contractor effort in FAR 15.905-1(a). This subfactor, "other costs", is described under 1415.905-1(a)(4).

(c) Procedures for calculating profit or fee prenegotiation objectives are prescribed in 1415.905-70.

(d) Form DI-1920, Structured Approach for Profit/Fee Objective—Department of the Interior (1453.215-17), shall be used to facilitate the calculation of the profit or fee objective.

[49 FR 14259, Apr. 10, 1984, as amended at 51 FR 41965, Nov. 20, 1986]

1415.905-1 Common factors.

The following guidance supplements the policy prescribed for profit-analysis factors in FAR 15.905-1. Weight ranges are prescribed for each factor or subfactor, as appropriate, for use in evaluating and calculating the specific weighted profit or fee objective (see 1415.905-70).

(a) *Contractor effort.* This factor measures the prospective contractor's contribution to the overall effort to meet contract performance requirements in an efficient and cost-effective manner. Considerations include the resources necessary for the prospective contractor to accomplish the conversion of labor and materials into the required contract items, the difficulty or complexity of the work to be performed, and the degree to which the contract requires a new approach or technique to be utilized for successful performance. This factor requires an analysis of the cost content of subfactors in FAR 15.905-1(a) as supplemented below, and includes an additional subfactor covering other costs. These subfactors may be modified, as necessary, to maintain consistency with cost categories used by prospective contractors.

(1) *Material acquisition (1 to 4%).* In evaluating the prospective contractor's managerial and technical effort under this subfactor, consideration shall also include (i) how the purchasing and subcontracting programs will contribute to the performance of the contract, and (ii) the extent of competition to be achieved in the award of subcontracts.

(2) *Conversion of direct labor (4 to 12%).* In evaluating the contribution of direct labor, considerations include

(i) the amount of scientific or unusual or scarce engineering expertise needed in comparison to journeyman labor or supporting personnel, (ii) the diversity (or lack thereof) of scientific and engineering disciplines required for contract performance and the corresponding need for engineering supervision and coordination, (iii) the quality of professional or engineering type skills required for service contract labor in comparison to semi-professional or other type skills to be employed, and (iv) the variety and complexity of manufacturing and other types of related skills and experience required and the prospective contractor's resources for meeting these requirements.

(3) *Conversion-related indirect costs (3 to 8%).* Elements of overhead and other indirect items of expense of the prospective contractor shall be individually analyzed to determine the extent to which they directly contribute to the conversion of labor and materials into the contract items. Any cost objective for facilities capital cost of money and allowable under FAR 31.205-10 shall be subtracted from the cost objective established for this subfactor and shall not be considered in the cost base used for calculating the profit objective (see 1415.905-70(b)(1)).

(4) *Other costs (1 to 3%).* This subfactor, which is not included under FAR 15.905-1, measures the contribution of all other direct costs including travel, direct support, and hiring of consultants to contract performance.

(5) *General management (4 to 8%).* In evaluating the prospective contractor's other indirect costs and G&A expense, consideration shall include the degree to which management problems may occur during contract performance and the management expertise which may be required to resolve them.

(b) *Contract cost risk (0 to 7%).* This factor is measured by evaluating the cost risk in terms of the degree of cost responsibility the prospective contractor assumes, the reliability of the cost estimates in relation to type of work under the contract, and the complexity of the work to be performed. Consideration shall also be given the degree to which the prospective contractor's subcontracting program may transfer real cost risk to subcontractors.

(1) *Cost reimbursement contracts (0 to 3%).* Generally, a cost-plus-fixed-fee contract would not justify compensation for risk in excess of 0%, unless the contract contains cost risk features such as overhead ceilings where ½ to 1% may be justified. Cost-plus-incentive fee contracts may justify weightings of 1 to 3% depending on target cost reliability, the share ratio of the fee, and whether cost incentives or multiple incentives are involved.

(2) *Fixed-price contracts (3 to 7%).* The range of weightings for fixed-price contracts is wide to accommodate the many types of fixed-price arrangements and the varying cost risks associated with these arrangements. Generally, a firm fixed-price contract for complex work involving a critical performance schedule would justify a weighting near the top of the range.

(c) *Federal socioeconomic programs (−.5 to +.5%).* This factor measures the extent of the prospective contractor's successful participation and proposed positive actions in support of Federal socioeconomic programs, including women-owned business programs. The prospective contractor's policies and procedures which display unusual initiative in support of socioeconomic programs and have achieved successful results shall be given a positive weighting. A failure or unwillingness on the part of the prospective contractor to support these programs shall be considered inadequate performance and shall result in a corresponding weighting.

(d) *Capital investments (−2 to +2%).* In evaluating investments, consideration shall include an analysis of the cost impact the facilities to be provided by the prospective contractor will have on total contract costs. If the prospective contractor furnishes its own facilities which significantly lowers the contract cost, a positive profit weighting is justified. Government financing or furnishing of required facilities, however, shall result in a negative weighting. Consideration shall also include the frequency of payment by the Government and the impact the contract is anticipated to have on the prospective contractor's cash flow. Generally, a negative weighting shall be given for payments more frequent than monthly. For payments less frequent than monthly, a positive weighting is justified.

(e) *Cost control and other past accomplishments* (−1 to +1%). This factor measures present and previous demonstration of efficient and economic contract performance for related work by the prospective contractor. Consideration shall include quality of work, ability to meet performance and delivery schedules, productivity improvements, efficiency in cost control and reduction, accuracy and reliability of cost estimates, and compliance with contract terms and conditions. Consistent excellent performance by the prospective contractor in the areas above, in comparison with other contractors in similar circumstances, shall justify a positive weighting. Unsuccessful or poor performance shall result in a corresponding rating.

(f) *Independent development.* No weight ranges are set forth for this factor since its significance in contributing to contract performance depends on the degree the development efforts, if any, are relevant to the contract end items. Other considerations include initiative of the prospective contractor in determining the need and application of the development, the extent of the prospective contractor's cost risks in the development, and the extent of direct or indirect development cost recovery from Government sources.

[49 FR 14259, Apr. 10, 1984, as amended at 51 FR 41965, Nov. 20, 1986]

1415.905-70 Calculation of profit objective.

(a) Development of a profit or fee objective shall not begin until the contracting officer has—

(1) Made a thorough review of the work to be performed under the acquisition action;

(2) Collected and analyzed all available information on the prospective contractor; and

(3) Analyzed the prospective contractor's cost proposal and compared the cost elements of the proposal with the elements of the Government's cost estimate for the contract work (see FAR 15.803(b)).

(b) The contracting officer shall calculate a dollar profit amount for each of the factors and subfactors in FAR 15.905-1 and 1415.905-1 by using a percentage within the designated weight range for each factor as prescribed in 1415.905-1. Form DI-1920, Structured Approach for Profit/Fee Objective—Department of the Interior (see 1453.215-71), shall be used to facilititate calculation of the objective in accordance with the following steps—

(1) Using the prenegotiative objective established as required in FAR 15.807, determine the Government's cost objective for each of the subfactors listed in FAR 15.905-1(a) and 1415.905-1(a). An additional subfactor, "other costs", shall be used to consider all other direct costs (see 1415.905-1(a)(5)). Any cost objective established for the cost of money for facilities capital shall be subtracted from the overall cost objective established for the 'conversion-related indirect costs' subfactor.

(2) Using the weight ranges in 1415.905-1(a), determine a specific percentage for each subfactor and multiply this percentage by the cost objective determined for the subfactor under paragraph (b)(1) of this section to calculate a weighted profit amount for each subfactor.

(3) Total the individual cost objectives for each of the subfactors in paragraph (b)(1) of this section to calculate the Government's total prenegotiation objective.

(4) Using the weight ranges in 1415.905-1 (b)-(f), determine a specific percentage for each of the factors in FAR 15.905-1 (b)-(f).

(5) Multiply the percentages determined for each of the factors in paragraph (b)(4) of this section by the Government's total prenegotiation objective calculated in paragraph (b)(3) of this section to obtain a weighted profit amount for each factor.

(6) Total the individual weighted profit amounts calculated in paragraphs (b) (2) and (5) of this section to obtain the total profit or fee prenegotiation objective amount.

[49 FR 14259, Apr. 10, 1984, as amended at 51 FR 41965, Nov. 20, 1986]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1419—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 1419.2—Policies

Sec.
1419.201 General policy.

Subpart 1419.5—Set-Asides for Small Business

1419.503 Setting aside a class of acquisitions.
1419.503-70 Class set-aside for construction acquisitions.
1419.505 Rejection of set-aside recommendations.

Subpart 1419.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

1419.705 Responsibilities of the contracting officer under the subcontracting assistance program.
1419.705-6 Postaward responsibilities of the contracting officer.
1419.705-70 Requesting a subcontracting plan.

Subpart 1419.8—Contracting With the Small Business Administration (the 8(a) program)

1419.810 Contract administration.
1419.810-70 Evaluation of 8(a) contractor performance.

Subpart 1419.9—Contracting Opportunities for Women-Owned Business

1419.901 Policy.

AUTHORITY: Sec 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

SOURCE: 49 FR 14262, Apr. 10, 1984, unless otherwise noted.

Subpart 1419.2—Policies

1419.201 General policy.

(a) In accordance with Part 111, Chapter 8 of the Departmental Manual (111 DM 8), the Office of Small and Disadvantaged Business Utilization (OSDBU) is responsible for performing all functions and duties prescribed in FAR 19.201(c) and for—

(1) Developing and maintaining policies, procedures, regulations, and guidelines for the effective administration of the Department's small business and small disadvantaged business programs; and

(2) Providing functional direction and policy guidance to personnel in the implementation of the programs under (1) above.

(b) In addition to the requirements of FAR 19.201(b), heads of contracting activities or their designees shall be responsible for:

(1) Establishment of annual goals in accordance with Subpart 1419.70; and

(2) Appointment of a full-time Business Utilization and Development Specialist (BUDS), as prescribed in FAR 19.201(d), for each contracting office where—

(i) Annual contract obligations regularly exceed $20 million or represent a substantial part of the Bureau's total contracting program; and

(ii) The number, type, and size of contract transactions provide sufficient opportunities for small business and small disadvantaged business participation.

(3) Appointment of a part-time BUDS for each contracting office where the nature of the contracting program requires such action to ensure accomplishment of annual program goals.

(c) Business Utilization and Development Specialists appointed as prescribed in paragraph (b) of this section shall be responsible for:

(1) Assisting contracting officers in carrying out the policies as set forth in FAR Part 19 and Part 1419.

(2) Establishing an effective outreach program, which shall include but not be limited to:

(i) Locating new and emerging small business and small disadvantaged business concerns which have actual or potential capabilities to fulfill Interior's acquisition requirements, assuring that such firms are included on bidders mailing lists or source lists;

(ii) Advising and counseling small business and small disadvantaged business concerns on ways to increase their participation in contract and subcontract opportunities by: explaining bid and proposal submission requirements; serving as the focal point to ensure that small business and small disadvantaged business concerns have access to appropriate acquisition, management, technical and other program and project personnel; and directing small business and small disadvantaged business concerns to the Small Business Administration or the Minority Business Development Agency (Department of Commerce) for assistance when appropriate;

(iii) Participating in the activities of local small business and disadvantaged business associations, Minority Business Opportunity Committees, and Indian tribal councils to apprise them of the contracting activity's needs and to increase small business and disadvantaged business contracting opportunities; and

(iv) Performing outreach efforts through interaction with Federal, state and local entities and other pertinent associations and groups; participating in business and economic development conferences, and providing training opportunities in support of business and economic development programs.

(3) Assisting in the acquisition process by:

(i) Assuring that the contracting office(s) or activity is kept abreast of new or revised small business and small disadvantaged business concern regulations, policies, procedures and other related information;

(ii) Assisting in the advance acquisition planning process (see Subpart 1407.1);

(iii) Reviewing each acquisition requirement over $25,000 as well as a reasonable sample of small purchases;

(iv) Participating in proposal evaluation activities (when appropriate or when requested by the contracting officer);

(v) When appropriate, attending debriefings to unsuccessful small business and small disadvantaged business concerns; and

(vi) Assuring that a fair proportion of eligible small business and small disadvantaged business concerns are included on solicitation mailing lists and source lists.

(4) Maintaining all records and files necessary to demonstrate maximum support for the program; assuring compilation of current, accurate, and complete data, preparing all reports pertaining to small business and small disadvantaged business activities.

Subpart 1419.5—Set-Asides for Small Business

1419.503 Setting aside a class of acquisitions.

1419.503-70 Class set-aside for construction acquisitions.

(a) To assure that a fair portion of the Department's contracts are placed with small business concerns, all acquisitions for construction (as defined in FAR 36.102) estimated to cost $1 million or less shall be set aside on a class basis for exclusive participation by small business concerns except where small purchase procedures are used to accomplish the acquisition or when the acquisition involves emergency repair work. If the construction site is located in a labor surplus area, the acquisition shall be set aside for the exclusive participation of small businesses located in labor surplus areas (see FAR 19.504(a)). Any modification of this policy by the contracting officer shall be conducted in accordance with FAR 19.506.

(b) All acquisitions for construction estimated to cost in excess of $1 million shall be set aside on a case-by-case basis for exclusive participation of small business concerns or small business concerns located in labor surplus areas under the conditions in FAR 19.502-2 and 20.201-1.

1419.505 Rejections of set-aside recommendations.

(a) As prescribed in FAR 19.505, the Assistant Secretary—Policy, Budget and Administration is authorized to reply to the Administrator of SBA on any SBS appeal of a contracting officer's set-aside recommendation.

(b) A written justification in support of the contracting officer's decision to reject the set-aside recommendation shall be approved by the head of the contracting activity (or designee). It shall then be forwarded for sequential review through the Director, Office of Small and Disadvantaged Business

Utilization and the Director, Office of Acquisition and Property Management, for action by the Assistant Secretary—Policy, Budget and Administration.

Subpart 1419.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

1419.705 Responsibilities of the contracting officer under the subcontracting assistance program.

1419.705-6 Postaward responsibilities of the contracting officer.

In addition to the actions specified In FAR 19.705-6, the contracting officer shall also be responsible for the following:

(a) Forwarding a copy of each approved subcontracting plan to OSDBU within 10 working days after approval of the plan.

(b) Ensuring that the contractor is forwarding the original copy of the Standard Form 295, Summary Subcontracting Report, to the Department of the Interior, Director, OSDBU, 18th and C Streets NW., Washington, DC 20240, Room 2747.

(c) Forwarding a copy of the Standard Form 294, Subcontracting Report for Individual Contacts, received from individual contractors, within 10 working days, to OSDBU.

(d) Conducting on-site business and economic development program management reviews (see 504 DM 1) of a prime contractor's small and disadvantaged business subcontracting program. Reviews shall be conducted as required based on problems perceived such as insufficient progress in meeting subcontracting goals. The results of the review shall be documented in writing using the format shown at 1453.303-71. At the discretion of the contracting officer, the Business Utilization and Development Specialists (BUDS) may conduct the reviews. In addition to required bureau/office internal distribution, a copy of the review report shall be submitted to OSDBU within 25 working days after completion of the review.

[51 FR 41966, Nov. 20, 1986]

1419.705-70 Requesting a subcontracting plan.

When a subcontracting plan is requested, the contracting officer shall—

(a) Send the offeror or bidder a request for the plan and include a copy of a sample subcontracting plan outline (see 1453.219-71).

(b) Specify a time limit for submission of the plan.

Subpart 1419.8—Contracting With the Small Business Administration (the 8(a) program)

1419.810 Contract administration.

1419.810-70 Evaluation of 8(a) contractor performance.

(a) It is the policy of the Department to require evaluation of SBA 8(a) contractor performance by the contracting activity using form DI-1919, Performance Evaluation 8(a)). (See 1453.219-72.)

(b) The report shall be prepared at the time of final acceptance of the work or after contract termination. Ordinarily, the evaluating official who prepares the report should be the person responsible for monitoring contract performance. The authorized representative of the contracting officer shall provide timely evaluation of the SBA 8(a) contractor's performance.

(c) If the evaulation official concludes that the contractor's overall performance was poor or unsatisfactory, the contractor shall be advised in writing that a report of this performance is being proposed and the basis for the evaluation. If the contractor submits any comments, the evaluating official shall include them in the report, resolve any alleged factual discrepancies, and make appropriate changes in the report.

(d) Each performance report shall be filed in accordance with bureau procedures and a copy of the report shall be promptly forwarded to the Office of Small and Disadvantaged Business Utilization.

Subpart 1419.9—Contracting Opportunities for Women-Owned Business

1419.901 Policy.

(a) The Office of Small and Disadvantaged Business Utilization is responsible for carrying out the Department's women-owned business enterprise program in accordance with Part 111, Chapter 8 of the Departmental Manual (111 DM 8).

(b) Annual goals for contract awards to women-owned businesses shall be established as prescribed in 1419.202-70.

(c) Small women-owned businesses shall be considered for subcontracting opportunities under FAR 19.702 and subcontract awards shall be reported as prescribed in FAR 19.704.

PART 1420—LABOR SURPLUS AREA CONCERNS

Subpart 1420.1—General

Sec.
1420.102 General policy.

Subpart 1420.2—Set-asides

1420.201 Set-asides for labor surplus area concerns.
1420.201-70 Set-asides for construction acquisitions.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

SOURCE: 49 FR 14263, Apr. 10, 1984, unless otherwise noted.

Subpart 1420.1—General

1420.102 General policy.

As prescribed under Part III, Chapter 8 of the Departmental Manual (III DM 8), the Office of Small and Disadvantaged Business Utilization is responsible for carrying out the Department's labor surplus area program in accordance with the policies in FAR Part 20. Annual goals for contract awards to labor surplus area concerns on a set-aside basis shall be established by the heads of contracting activities using the procedures prescribed in 1419.202-70(b).

[49 FR 14263, Apr. 10, 1984, as amended at 51 FR 41966, Nov. 20, 1986]

Subpart 1420.2—Set-asides

1420.201 Set-asides for labor surplus area concerns.

1420.201-70 Set-asides for construction acquisitions.

(a) As prescribed in 1419.503-70, all acquisitions for construction, alteration, or repair of buildings, structures, or other real property which are estimated to cost $1 million or less shall be set aside on a class basis for combined small business, labor surplus area concerns when the construction site is located in a labor surplus area.

(b) Construction acquisitions estimated to exceed $1 million in cost may be set aside for labor surplus area concerns by the contracting officer under the conditions prescribed in FAR 20.201-1.

PART 1424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1424.1—Protection of Individual Privacy

Sec.
1424.102 General.
1424.103 Procedures.
1424.104 Contract clauses.

Subpart 1424.2—Freedom of Information Act

1424.202 Policy.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

SOURCE: 49 FR 14263, Apr. 10, 1984, unless otherwise noted.

Subpart 1424.1—Protection of Individual Privacy

1424.102 General.

Procedures for implementing the Privacy Act of 1974 and Departmental regulations under 43 CFR 2, Subpart D, are contained in Part 317 of the Departmental Manual (317 DM).

1424.103 Procedures.

When required by FAR 24.103(b)(2), the contracting officer shall provide the contractor with a copy of the Department's Privacy Act regulations codified in 43 CFR 2, Subpart D.

1424.104 Contract clauses.

The clause at FAR 52.224-1, Privacy Act Notification, as prescribed in FAR 24.104(a), shall be supplemented in accordance with 1452.224-1.

Subpart 1424.2—Freedom of Information Act

1424.202 Policy.

(a) The Department's implementation of the Freedom of Information Act is codified in regulations under 43 CFR 2.11-2.20.

(b) It is the policy of the Department to alert prospective contractors which place restrictions on the disclosure and use of proposal data that certain data may be subject to disclosure under a Freedom of Information Act request. (See 1415.413 and 1452.215-71.)

PART 1425—FOREIGN ACQUISITION

Subpart 1425.2—Buy American Act—Construction Materials

Sec.

1425.202 Policy.
1425.203 Evaluating offers.
1425.204 Violations.
1425.205 Solicitation provision.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

SOURCE: 49 FR 14264, Apr. 10, 1984, unless otherwise noted.

Subpart 1425.2—Buy American Act—Construction Materials

1425.202 Policy.

(a) The Assistant Secretary—Policy, Budget and Administration shall make the determinations prescribed in FAR 25.202(a)(2) and FAR 25.203(a).

(b) The Director, Office of Acquisition and Property Management shall make the determination prescribed in FAR 25.202(a)(3) in accordance with the procedures in 1425.108.

(c) Determinations under paragraph (a) of this section shall be prepared by the contracting officer and submitted by the head of the contracting activity to the Director, Office of Acquisition and Property Management for further action.

(d) Determinations approved under FAR 25.202(a)(2) shall require listing of excepted material in the contract as prescribed in FAR 25.202(c).

1425.203 Evaluating offers.

(a) Unless the Assistant Secretary—Policy, Budget and Administration determines otherwise, when the cost of a comparable domestic construction material exceeds by more than 6 percent the cost of a foreign construction material proposed in an offer, use of the domestic construction material would unreasonably increase the cost of the contract and use of the foreign construction material is authorized and acceptable. This evaluation shall be made for each foreign construction material proposed in an offer and not specifically excepted by the solicitation. The cost of construction material shall be computed to include all delivery costs to the construction site, and the cost of foreign construction material shall also include any applicable duty (whether or not a duty-free entry certificate may be issued).

(b) The provision at 1452.225-70, Buy American Act Notice—Department of the Interior, requires offerors proposing to use foreign construction materials to provide adequate information for Government evaluation under paragraph (a) of this section, and permits alternate offers for comparable domestic construction materials at stated prices. When a foreign construction material is not authorized under paragraph (a) of this section, evaluation of the offer shall be made on the basis of the stated price for comparable domestic construction material. If the offer does not state a price for comparable domestic construction material, and use of the foreign construction material is not authorized under paragraph (a) of this section, the offer shall be rejected.

(c) The acceptable offer that remains low after adding (for evaluation purposes only) 6 percent of the cost of all foreign construction materials authorized for use under paragraph (a) of this section shall be considered the successful offer. The contract awarded under these circumstances shall contain a list of the authorized foreign construction materials as required by FAR 25.202(c) and the clause at FAR 52.225-5, Buy American Act—Construction Materials.

(d) Determinations for authorization to use evaluation methods other than those prescribed in this section shall be prepared by the contracting officer and submitted by the head of the contracting activity to the Director, Office of Acquisition and Property Management for further action. The determination shall specify particular domestic construction materials which are expected to unreasonably increase the cost or are impracticable, and the percentage differential to be used in evaluating such materials. If the determination is approved, the Director, Office of Acquisition and Property Management shall authorize appropriate revisions to the provision at 1452.225-70.

1425.204 Violations.

Failure of the contractor to comply with the clause at FAR 52.225-5, Buy American Act—Construction Materials, shall be documented in a report by the contracting officer and submitted to the head of the contracting activity for initiation of debarment action in accordance with Subpart 1409.4.

1425.205 Solicitation provision.

In addition to the requirements of FAR 25.205, the contracting officer shall insert the provision at 1452.225-70, Buy American Act Notice—Department of the Interior, in solicitations for construction inside the United States. For determinations made under FAR 25.202(a)(2) that use of a domestic construction material would be impracticable (see 1425.202), the material shall be listed under paragraph (a) of the provision at 1452.225-70.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1428—BONDS AND INSURANCE

Subpart 1428.1—Bonds

Sec.
1428.101 Bid guarantees.
1428.101-70 Annual bid bonds.
1428.104 Annual performance bonds.

Subpart 1428.3—Insurance

1428.301 Policy.
1428.306 Insurance under fixed-price contracts.
1428.306-70 Insurance for aircraft services contracts.
1428.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.
1428.311-2 Contract clause.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

SOURCE: 49 FR 14264, Apr. 10, 1984, unless otherwise noted.

Subpart 1428.1—Bonds

1428.101 Bid guarantees.

1428.101-70 Annual bid bonds.

(a) Bidders shall submit annual bid bonds to the Office of Acquisition and Property Management, Office of the Secretary, U.S. Department of the Interior, Washington, DC 20240.

(b) The Office of Acquisition and Property Management will maintain and disseminate all information regarding annual bid bonds.

1428.104 Annual performance bonds.

Annual performance bonds shall be submitted to the location prescribed in 1428.101-70.

Subpart 1428.3—Insurance

1428.301 Policy.

It is the policy of the Department of the Interior to insure its own risks only when such action is in the best interest of the Government. Circumstances where contractors are required to carry insurance are listed under FAR 28.301 and 28.306. In these circumstances, the clause at 1452.228-70, Liability Insurance—Department of the Interior, shall be inserted in the contract.

[49 FR 14264, Apr. 10, 1984, as amended at 51 FR 41966, Nov. 20, 1986]

1428.306 Insurance under fixed-price contracts.

1428.306-70 Insurance for aircraft services contracts.

(a) *Policy.* In accordance with FAR 28.306(a), it is the policy of the Department of the Interior to establish minimum insurance requirements for certain types of aircraft services contracts in order to protect the Government and its contractors.

(b) *Applicability.* The clauses prescribed by paragraph (c) of this section are applicable to all fixed-price contracts involving use of aircraft with either contractor-furnished or Government-furnished pilot except for onetime charters when Government exposure is minimal and time limitations are present.

(c) *Clauses.* The following clauses shall be used as prescribed:

(1) The contracting officer shall insert the clause at 1452.228-71, Aircraft and General Liability Insurance—Department of the Interior, in all fixed-price contracts for operation of aircraft with contractor-furnished pilot.

(2) The contracting officer shall insert the clause at 1452.228-72, Liability for Loss or Damage—Department of the Interior, in all fixed-price contracts involving the use of aircraft with Government-furnished pilot where the Government does not have a property interest in the aircraft.

(3) The contracting officer shall insert the clause at 1452.228-73, Liability for Loss or Damage—Department of the Interior, (Property Interest), in all fixed-price controls involving the use of aircraft with Government-furnished pilot where the Government has a property interest in the aircraft (e.g., lease with purchase option).

[49 FR 14264, Apr. 10, 1984, as amended at 54 FR 10989, Mar. 16, 1989]

1428.311 Soliciation provision and contract clause on liability insurance under cost-reimbursement contracts.

1428.311-2 Contract clause.

The clause at FAR 52.228-7, Insurance—Liability to Third Persons, as prescribed in FAR 28.311-2, shall be modified for use in accordance with the instructions in 1452.228-7.

PART 1432—CONTRACT FINANCING

Subpart 1432.3—Loan Guarantees for Defense Production

Sec.

1432.304 Procedures.
1432.304-2 Certificate of eligibility.

Subpart 1432.4—Advance Payments

1432.402 General.
1432.404 Exclusions.

Subpart 1432.8—Assignment of Claims

1432.805 Procedure.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

SOURCE: 49 FR 14265, Apr. 10, 1984, unless otherwise noted.

Subpart 1432.3—Loan Guarantees for Defense Production

1432.304 Procedures.

1432.304-2 Certificate of eligibility.

(a) The Assistant Secretary—Policy, Budget and Administration shall authorize guaranteed loan applications and transmit them to the Federal Reserve Bank as prescribed in FAR 32.304-2(h).

(b) Applications for loan guarantees (see FAR 32.304-1) and the contracting officer's certificate of eligibility (see FAR 32.304-2) shall be submitted by the head of the contracting activity to the Director, Office of Acquisition of Property Management for further action under paragraph (a) of this section.

Subpart 1432.4—Advance Payments

1432.402 General.

(a) Except for contracts excluded under paragraph (b) below and under 1432. 404, the Chief, Division of Acquisition and Grants, Office of Acquisition and Property Management, is authorized to approve findings and determinations and contract terms for advance payments as prescribed in FAR Subpart 32.4.

(b) The Assistant Secretary for Indian Affairs is authorized to approve findings and determinations and contract terms for advance payments as prescribed in FAR Subpart 32.4 for—

(1) Contracts with States or similar public bodies for foster home care of Indian children for periods not in excess of 90 days;

(2) Contracts with state universities or similar public bodies for surveys of physical resources and the development of studies of social and economic factors affecting Indian tribes without specific security for periods not in excess of 90 days; or

(3) Contracts with Indian tribal contractors which are totally Indian-owned and controlled nonprofit businesses and which qualify for contracts with the Bureau of Indian Affairs. The amount of the advance payments authorized shall not exceed $250,000.

(c) The contracting officer shall review and analyze the contractor's application for advance payments to determine if it meets the information requirements of FAR 32.408. Applications which do not contain the required information shall not be processed until it is obtained from the contractor.

(d) The contracting officer shall submit a recommendation for approval or disapproval of the contractor's request through the head of the bureau finance office (see FAR 32.402(e)(2)) to the head of the contracting activity for transmittal to the Chief, Division of Acquisition and Grants under paragraph (a) above. Recommendations which do not contain the information required by FAR 32.409-1 or FAR 32.409-2 will not be processed by the Division of Acquisition and Grants.

(e) The Assistant Secretary for Indian Affairs is required to make a detailed report to the Assistant Secretary—Policy, Budget and Administration on all advance payments authorized under paragraphs (b)(1) and (b)(2) of this section at the close of each fiscal year.

1432.404 Exclusions.

Advance payments may be used under Bureau of Indian Affairs service contracts (including services which may extend beyond the current fiscal year) made pursuant to the Act of June 4, 1936 (25 U.S.C. 452), the Act of August 3, 1956 (25 U.S.C. 309), and statutes terminating Government supervision over certain Indian tribes, without regard to FAR 32.402(e), when the current Department Appropriations Act authorizes and requires advance payments in these circumstances.

Subpart 1432.8—Assignment of Claims

1432.805 Procedure.

Department of the Interior form DI-83, Notice of Assignment, and form DI-84, Instrument of Assignment, shall be used by an assignee when complying with the requirements in FAR 32.803(e). (See 1453.232-70.)

PART 1433—PROTESTS, DISPUTES, AND APPEALS

Subpart 1433.1—Protests

Sec.

1433.102 General.
1433.103 Protests to the agency.
1433.104 Protests to GAO.
1433.105 Protests to GSBCA.
1433.106 Solicitation provision.

Subpart 1433.2—Disputes and Appeals

1433.203 Applicability.
1433.203-70 Interior Board of Contract Appeals.
1433.211 Contracting officer's decision.
1433.212 Contracting officer's duties upon appeal.
1433.214 Contract clause.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1433.1—Protests

SOURCE: 51 FR 8830, Mar. 14, 1986, unless otherwise noted.

1433.102 General.

The Office of the Solicitor shall be responsible for handling bid protests filed with the General Accounting Office (GAO) or for bid protests concerning automatic data processing (ADP) acquisitions filed with the General Services Administration Board of Contract Appeals (GSBCA). All communications relative to protests filed with GAO or GSBCA shall be coordinated with the Assistant Solicitor for Procurement and Patents.

1433.103 Protests to the agency.

For protests filed with a bureau or office and received before award, the contracting office shall obtain the advice of the appropriate Regional or Field Solicitor and notify the Assistant Solicitor for Procurement and Patents before making the determination under FAR 33.103(a).

1433.104 Protests to the GAO.

(a) *General.* A protestor shall furnish a copy of its complete protest simultaneously to the officials designated in the provision at 1452.233-2, Service of Protest, as prescribed in 1433.106.

(b) *Notice of protest.* Upon being telephonically advised by the GAO of the receipt of a protest before or after award, the Office of the Solicitor shall inform the appropriate contracting activity which shall immediately notify the contracting officer and request preparation of the protest report required by FAR 33.104(a)(2). For protests concerning ADP acquisitions, the Office of the Solicitor shall also inform the Director, Office of Information Resources Management, who, in turn, shall notify the appropriate bureau Information Resources Management (IRM) contact and GSA official. As required by FAR 33.104(a)(3) and 4 CFR 21.3, the contracting officer shall promptly notify all interested parties, including offerors (or the contractor if the protest is after award) involved in or affected by the protest, that a protest has been filed with the GAO and the basis for the protest. A written record of such notification shall be placed in the contract file. After receiving a copy of the protest from GAO and its request for an administrative report, the Office of the Solicitor will promptly furnish the same to the contracting activity involved which shall, in turn, promptly transmit copies to the contracting officer. The contracting officer shall promptly transmit by letter a copy of the protest to all interested parties previously notified and include a statement requiring furnishing of views and information directly to the GAO. Copies of such cover letters shall be sent concurrently to the Assistant Solicitor for Procurement and Patents. Cover letters shall contain a specified period of time for submission of comments (see FAR 33.104(a)(3)) and include instructions that any comments submitted to the GAO should also be submitted simultaneously to the contracting officer and the Assistant Solicitor for Procurement and Patents. Materials submitted by the protester may be withheld from interested parties in accordance with 4 CFR 21.3(b).

(c) *Submission of report.* (1) All personnel shall handle protests on a priority basis. Within 25 work days after receipt by the Office of the Solicitor of the GAO's telephonic notice of the protest, or within 10 work days after receipt from GAO of a determination to use the express option, a complete report shall be submitted to the CAO (see FAR 33.104(a)(2)). If the specific circumstances of the protest require a longer period, the contracting activity shall immediately notify the Office of the Solicitor which shall request, in writing, an extension of the period in accordance with 4 CFR 21.3(d). The contracting activity shall have no more than 15 work days from the date of telephonic notification by the Office of the Solicitor to deliver the protest report to the Assistant Solicitor for Procurement and Patents. For reports involving use of the 10 work day express option, the Office of the Solicitor shall establish the report delivery date after consultation with the contracting activity.

(2) In addition to the requirements of FAR 33.104(a)(2), the report responsive to the protest shall be appropriately titled and dated; shall cite the GAO file number; and shall be signed by the contracting officer or representative. Reports shall be prepared with the assistance of the local attorney-advisor of the Office of the Solicitor. If appropriate, the report shall contain a statement regarding any urgency for the acquisition and the extent to which a delay in award may result in significant performance difficulties or additional expense to the Government. If award is not urgent, a statement shall be included giving an estimate of the length of time an award may be delayed without significant expense or difficulty in performance. The contracting activity shall submit an original and two complete copies of the contracting officer's report to the Assistant Solicitor for Procurement and Patents plus one complete copy for each interested party who responded to GAO and the contracting officer and Assistant Solicitor for Procurement and Patents in response to the notification under paragraph (b) of this section. The Assistant Solicitor for Procurement and Patents shall be responsible for submitting the report to GAO and sending copies of the report to each interested party.

(d) *Protests before award.* If a protest before award has been filed with GAO and the contracting officer determines in writing that it is necessary to make award under the circumstances in FAR 33.104(b)(1), the contracting officer shall obtain advice from the Assistant Solicitor for Procurement and Patents and such determination shall be submitted for approval by the head of the contracting activity. The contracting officer shall notify GAO prior to award as required by FAR 33.104(b)(2). The written determination shall be included in the file and the contracting officer shall give notice of the decision as required by FAR 33.104(d).

(e) *Protests after award.* If notice of a protest has been received from GAO within 10 calendar days after award and the contracting officer determines in writing that contract performance should continue under the circumstances in FAR 33.104(c)(2), the contracting officer shall obtain advice from the Assistant Solicitor for Procurement and Patents and such determination shall be submitted for immediate approval by the head of the contracting activity. Pending approval of the determination, suspension of performance or termination of the contract shall not be initiated. The contracting officer shall notify GAO as required by FAR 33.104(c)(3). The written determination shall be included in the file and the contracting officer shall give notice of the decision as required by FAR 33.104(d).

(f) *Notice to GAO.* The head of the contracting activity is authorized to submit the report required by FAR 33.104(f). The report shall be submitted to the Comptroller General through the Assistant Solicitor for Procurement and Patents and the Director, Office of Acquisition and Property Management. For decisions concerning ADP acquisitions, the report shall also be submitted through the Director, Office of Information Resources Management.

1433.105 Protests to GSBCA.

(a) *General.* A protester filing a protest with GSBCA on a solicitation or contract for ADP shall comply with the requirements of the provision at 1452.233-2, Service of Protest, as prescribed in 1433.106 on the same day the protest is filed with the GSBCA.

(b) *Notice of protest.* Immediately upon receipt of a copy of a protest to GSBCA, the Office of the Solicitor shall inform the Office of Information Resources Management and the contracting activity which shall immediately inform the contracting officer. The Office of Information Resources Management shall immediately notify its bureau IRM contact and the appropriate GSA official responsible for the delegation of procurement authority. The contracting officer shall within 1 work day after receipt of a copy of the protest provide oral or written notice to all parties required to be notified by FAR 33.105(a)(2) and shall provide the GSBCA with a written list of all such parties to whom notice was provided within 5 work days after receipt of a copy of the protest. A copy of all notifications to interested parties and related correspondence with GSBCA shall be maintained in the contract file and a copy of the list of interested parties notified shall be provided to the Office of the Solicitor simultaneously with submission to the GSBCA.

(c) *Submission of protest file.* An original and two copies of a protest file (See FAR 33.105(b)) plus one copy for each interested party which has filed a notice of intervention or a motion to intervene in accordance with the requirements of Rule 5(a)(3) of the GSBCA Rules of Procedure (48 CFR Part 61) shall be submitted by the contracting officer to the Office of the Solicitor within 8 work days after the filing of a protest. The protest file shall be organized to comply with the requirements of Rule 4(b) of the GSBCA Rules of Procedure. The Office of the Solicitor shall then submit the file to the GSBCA within 10 work days after filing of the protest and shall also send copies to each interested party.

(d) *Hearings.* The Office of the Solicitor shall be responsible for representing the contracting officer at any hearing on suspension of the agency's delegation of procurement authority (see FAR 33.105(d)) or at any hearing on the merits of the protest (see FAR 33.105(e)). The head of the contracting activity shall be responsible for executing the determination required by FAR 33.105(d)(1). The Office of the Solicitor shall notify the contracting officer and the Office of Information Resources Management of the results of the hearing.

1433.106 Solicitation provision.

The provision at FAR 52.233-2, Service of Protest, as prescribed in FAR 33.106, shall be modified in accordance with the instructions in 1452.233-2.

Subpart 1433.2—Disputes and Appeals

SOURCE: 49 FR 14265, Apr. 10, 1984. Redesignated at 50 FR 38658, Sept. 24, 1985, and 51 FR 8830, Mar. 14, 1986, unless otherwise noted.

1433.203 Applicability

(a) The Assistant Secretary—Policy, Budget and Administration shall make the determination prescribed under FAR 33.203(b).

(b) Determinations under paragraph (a) of this section shall be submitted by the head of the contracting activity to the Director, Office of Acquisition and Property Management for further action.

[49 FR 14265, Apr. 10, 1984. Redesignated and amended at 50 FR 38658, Sept. 24, 1985. Redesignated and amended at 51 FR 8830, Mar. 14, 1986]

1433.203-70 Interior Board of Contract Appeals.

(a) The Interior Board of Contract Appeals, IBCA, is authorized by the Secretary to consider and determine appeals from decisions of a contracting officer arising under a contract or relating to a contract made by the Department or any other executive agency when such agency or the Administrator of the Office of Federal Procurement Policy has duly designated the IBCA to decide the appeal.

(b) The address of the IBCA is 4015 Wilson Boulevard, Arlington, Virginia 22203.

(c) The IBCA rules of procedures are in 43 CFR Part 4, Subpart C.

1433.211 Contracting officer's decision.

The written decision required by FAR 33.211(a)(4) shall include, in the paragraph listed under FAR 33.211(a)(4)(v), specific reference to the Interior Board of Contract Appeals (IBCA), 4015 Wilson Boulevard, Arlington, Virginia 22203 and its procedures under 43 CFR Part 4. The IBCA optional small claims (expedited) procedures and accelerated procedures under 43 CFR 4.113 shall also be referenced as required by FAR.

[49 FR 14265, Apr. 10, 1984. Redesignated and amended at 50 FR 38658, Sept. 24, 1985. Redesignated and amended at 51 FR 8830, Mar. 14, 1986]

1433.212 Contracting officer's duties upon appeal.

(a) When a notice of appeal has been received, the contracting officer shall endorse on the appeal the date of mailing (or the date of receipt if the notice was not mailed) and forward it to the IBCA by certified mail within 5 days of receipt. The Office of the Solicitor shall also be notified of the appeal by the contracting officer. (See 43 CFR 4.103.)

(b) The contracting officer shall prepare and transmit the data, documentation, and information required by 43 CFR 4.104 in the form of an appeal file to the IBCA, appropriate office of the Solicitor, and appellant or appellant's counsel within 30 days after receipt of a notice of appeal or advice that an appeal has been docketed by the IBCA.

1433.214 Contract clause.

The Disputes clause contained in FAR 52.233-1 shall be used with its Alternate I in all solicitations and contracts of the Department.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 1436—CONSTRUCTION AND ARCHITECT-ENGINEERING CONTRACTS

Subpart 1436.2—Special Aspects of Contracting for Construction

Sec.
1436.209 Construction contracts with architect-engineer firms.

Subpart 1436.5—Contract Clauses

1436.570 Prohibition against use of lead based paint.

Subpart 1436.6—Architect-Engineer Services

1436.602 Selection of firms for architect-engineer contracts.
1436.602-1 Selection criteria.
1436.602-4 Selection authority.
1436.602-5 Short selection processes for contracts not to exceed $10,000.
1436.603 Collecting data on and appraising firms' qualifications.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); and 5 U.S.C. 301.

SOURCE: 49 FR 14266, Apr. 10, 1984, unless otherwise noted.

Subpart 1436.2—Special Aspects of Contracting for Construction

1436.209 Construction contracts with architect-engineer firms.

(a) As required by FAR 36.209, no contract for construction of a project shall be awarded to the firm that designed the project or its subsidiaries or affiliates without the written approval of the Director, Office of Acquisition and Property Management.

(b) Requests for approval under paragraph (a) of this section shall be made by the head of the contracting activity, through the appropriate Office of the Solicitor, to the Director, Office of Acquisition and Property Management. The request shall include the reason(s) why award to the design firm is required; an analysis of the facts involving potential or actual organizational conflicts of interest including benefits and detriments to the Government and the prospective contractor; and the measures which are to be taken to avoid, neutralize, or mitigate conflicts of interest.

Subpart 1436.5—Contract Clauses

1436.570 Prohibition against use of lead-based paint.

(a) *Policy.* The Lead-Based Paint Poisoning Prevention Act, (42 U.S.C. 4831), as amended by the National Consumer Health Information and Health Promotion Act of 1976 (Section 204, Pub. L. 94-317 (42 U.S.C. 4831)), prohibits the use of lead-based paint in Federal or federally assisted construction or rehabilitation of residential structures. Implementing regulations of the Secretary of Housing and Urban Development under 24 CFR Part 35 requires agencies to include appropriate provision in contracts or subcontracts for construction or rehabilitation of residential structures.

(b) *Definitions.* As used in this section, "residential structure" means any house, apartment, or structure intended for human habitation including any institutional structure where persons reside such as an orphanage, boarding school dormitory, day care center, or extended care facility.

(c) *Procedures.* The contracting officer shall insert the clause at 1452.236-70, Prohibition Against Use of Lead-Based Paint, in solicitations and contracts when construction of residential structures or rehabilitation (including dismantling, demolition, or removal) of residential structures is contemplated.

Subpart 1436.6—Architect-Engineer Services

1436.602 Selection of firms for architect-engineer contracts.

1436.602-1 Selection criteria.

(a) In addition to the selection criteria under FAR 36.602-1(a), the following additional criteria shall be used in the evaluation of each potential contractor when applicable to a particular acquisition:

(1) Computer assisted design capability and capacity (where such design is required.)

(2) Adequacy of facilities for performance of the work including those necessary to provide specialized services that may be required.

(3) Volume and nature of present workload as it relates to the ability to perform the work required.

(4) Experience and qualifications of proposed key personnel including specialized technical skills, project coordination and management skills, and experience in working together as a team.

(5) Availability of additional contractor personnel or consultants to support expansion or acceleration of the project.

(6) Other specific criterion as may be required.

(b) Heads of contracting activities are authorized to approve the use of design competition under the conditions in FAR 36.602-1(b).

1436.602-4 Selection authority.

The head of the contracting activity or designee is authorized to serve as the designated selection authority in accordance with FAR 36.602-4.

1436.602-5 Short selection processes for contracts not to exceed $10,000.

The selection process prescribed in FAR 36.602-5(a) shall be used for architect-engineer contracts not expected to exceed $10,000.

1436.603 Collecting data on and appraising firms' qualifications.

(a) Heads of contracting activities which require architect-engineer services shall establish procedures to comply with the requirements of FAR 36.603.

(b) Copies of procedures established under (a) above shall be submitted to the Director, Office of Acquisition and Property Management for review and approval. The procedures shall include a list of names, addresses, and phone numbers of offices or boards assigned to maintain architect-engineer qualification data files. The list shall be updated annually and submitted to the Director, Office of Acquisition and Property Management no later than 30 days after the beginning of each fiscal year.

PART 1437—SERVICE CONTRACTING

Subpart 1437.70—Appraisal Services (Real Property)

Sec.

1437.7000 Scope of subpart.
1437.7001 Policy.
1437.7002 Contractor qualification requirements.
1437.7003 Appraisal standards.

Subpart 1437.71—Information Collection Services

1437.7100 Scope of subpart.
1437.7103 Clause.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

SOURCE: 49 FR 14267, Apr. 10, 1984, unless otherwise noted.

Subpart 1437.70—Appraisal Services (Real Property)

1437.7000 Scope of subpart.

This subpart prescribes policies and procedures for acquiring real property appraisal services by contract.

1437.7001 Policy.

Contracts for real property appraisal services shall be awarded in accordance with FAR 37.105. The procedures for acquiring architect-engineer services, as prescribed in FAR Subpart 36.6, shall not be used to acquire real property appraisal services.

[49 FR 14267, Apr. 10, 1984, as amended at 51 FR 41966, Nov. 20, 1986]

1437.7002 Contractor qualification requirements.

(a) Prior to award of a contract for real property appraisal services when the services are required in support of court actions, the contracting officer shall coordinate with the appropriate Office of the Solicitor and obtain written concurrence from the Assistant U.S. Attorney assigned to represent the Government in the matter that the source to be selected possesses the necessary qualifications for adequate contract performance. This requirement shall be treated as a special standard of responsibility (see FAR 9.104-2).

(b) The contracting officer shall include the requirements of (a) above in all solicitations for real property appraisal services which may be subject to future court action.

[49 FR 14267, Apr. 10, 1984, as amended at 51 FR 41966, Nov. 20, 1986]

1437.7003 Appraisal standards.

(a) All real property appraisals made under a contract shall conform to the requirements of the Interagency Land Acquisition Conference publication "Uniform Appraisal Standards for Federal Land Acquisitions" published by the Government Printing Office.

(b) The standards in (a) above shall be made a part of all solicitations and resulting contracts for real property appraisal services.

Subpart 1437.71—Information Collection Services

1437.7100 Scope of subpart.

This subpart prescribed policies and procedures for acquiring information collection services which are subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 2501 *et seq.*).

1437.7103 Clause.

The contracting officer shall insert the clause at 1452.237-70, Information Collection—Department of the Interior, in all solicitations and contracts which are subject to the Paperwork Reduction Act of 1980.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1442—CONTRACT ADMINISTRATION

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1442.12—Novation and Change of Name Agreements

1442.1204 Agreement to recognize a successor in interest (novation agreement).

For protection of Government rights in accrual of inventions, patents and data, the novation agreement format prescribed in FAR 42.1204(e) shall be supplemented by adding the following item (10) under section (b) of the agreement—

> (10) The transferor agrees that any rights in inventions, patents, and data which accrue to the Gov..nment or to third party beneficiaries under the contracts between the transferor and the Government shall not be diminished as a result of the transfer instruments or this agreement.

[49 FR 14267, Apr. 10, 1984]

SUBCHAPTER H—CLAUSES AND FORMS

PART 1452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.
1452.000 Scope of part.

Subpart 1452.2—Texts of Provisions and Clauses

1452.200 Scope of subpart.
1452.204-70 Release of Claims.
1452.204-71 Indian Preference.
1452.204-72 Indian Preference Program.
1452.210-70 Brand Name or Equal.
1452.215-70 Examination of Records by the Department of the Interior.
1452.215-71 Use and Disclosure of Proposal Information.
1452.224-1 Privacy Act Notification.
1452.225-70 Buy American Act Notice.
1452.228-7 Insurance—Liability to Third Persons.
1452.228-70 Liability Insurance.
1452.228-71 Aircraft and general public liability.
1452.228-72 Liability for Loss or Damage.
1452.228-73 Liability for Loss or Damage (Property Interest).
1452.233-2 Service of Protest.
1452.236-70 Prohibition Against Use of Lead-based Paint.
1452.237-70 Information Collection.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

SOURCE: 49 FR 14267, Apr. 10, 1984, unless otherwise noted.

1452.000 Scope of part.

This part prescribes Department of the Interior provisions and clauses for use in acquisition.

Subpart 1452.2—Texts of Provisions and Clauses

1452.200 Scope of subpart.

This subpart sets forth the texts of all DIAR provisions and clauses. Consistent with the numbering scheme prescribed in FAR 52.101 and the approach used in Far Subpart 52.2, this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the DIAR in which provisions and clause requirements are addressed.

1452.204-70 Release of Claims.

As prescribed in 1404.804-70, insert the following clause in all construction contracts which exceed $25,000 and in all cost-reimbursement contracts which exceed $25,000.

RELEASE OF CLAIMS—DEPARTMENT OF THE INTERIOR (APR 1984)

After completion of work and prior to final payment, the contractor shall furnish to the contracting officer a release of claims (DI-137) against the United States relating to this contract, other than claims excepted from the operation of the release.

(End of clause)

1452.204-71 Indian Preference.

As prescribed in 1404.7003(a), insert the following clause in solicitations issued and contracts awarded (a) by the Bureau of Indian Affairs except those pursuant to Title I and to Indian Tribes and Indian Organizations under Title II of Pub. L. 93-638 (25 U.S.C. 450 *et seq.* and 25 U.S.C. 455 *et seq.*, respectively); (b) a contracting activity other than the Bureau of Indian Affairs when the contract is entered into pursuant to an act specifically authorizing contracts with Indian organizations, and (c) a contracting activity other than the Bureau of Indian Affairs when the work to be performed is specifically for the benefit of Indians and is in addition to any incidental benefits which might otherwise accrue to the general public.

INDIAN PREFERENCE—DEPARTMENT OF THE INTERIOR (APR 1984)

(a) The Contractor agrees to give preferences to Indians who can perform the work required regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation for training and employment opportunities under this contract and, to the extent feasible consistent with the efficient performance of this contract, training and employment preferences and opportunities shall be provided to Indians regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation who are not fully qualified to perform under this contract. The Contractor also agrees to give preference to Indian organizations and Indian-owned economic enterprises in the awarding of any subcontracts consistent with the efficient performance of this contract. The Contractor shall maintain such records as are necessary to indicate compliance with this paragraph.

(b) In connection with the Indian employment preference requirements of this clause, the Contractor shall also provide opportunities for training incident to such employment. Such training shall include on-the-job, classroom, or apprenticeship training which is designed to increase the vocational effectiveness of an Indian employee.

(c) If the Contractor is unable to fill its training and employment needs after giving full consideration to Indians as required by this clause, those needs may be satisfied by selection of persons other than Indians in accordance with the clause of this contract entitled "Equal Opportunity".

(d) If no Indian organizations or Indian-owned economic enterprises are available for awarding of subcontracts in connection with the work performed under this contract, the Contractor agrees to comply with the provisions of this contract involving utilization of small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, or labor surplus are concerns.

(e) As used in this clause:

(1) "Indian" means a person who is a member of an Indian Tribe. If the Contractor has reason to doubt that a person seeking employment preference is an Indian, the Contractor shall grant the preference but shall require the individual within thirty (30) days to provide evidence from the Tribe concerned that the person is a member of that Tribe.

(2) "Indian Tribe" means an Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 668; 43 U.S.C. 1601) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(3) "Indian organization" means the governing body of any Indian Tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974 (88 Stat. 77; 25 U.S.C. 1451); and

(4) "Indian-owned economic enterprise" means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit provided that such Indian ownership shall constitute not less than 51 percent of the enterprise.

(f) The Contractor agrees to include the provisions of the clause including this paragraph (f) in each subcontract awarded under this contract.

(g) In the event of noncompliance with this clause, the Contractor's right to proceed may be terminated in whole or in part by the Contracting Officer and the work completed in a manner determined by the Contracting Officer to be in the best interests of the Government.

(End of clause)

1452.204-72 Indian Preference Program.

As prescribed in 1404.7003(b), insert the following clause in all solicitations and contracts, awarded by the contacting activity which may exceed $50,000, and which contain the clause at 1452.204-71, and where it is determined by the Contracting Officer, prior to solicitation, that the work under the contract will be performed in whole or in part on or near an Indian reservation(s). The clause may also be included in solicitations issued and contracts awarded by a contracting activity which may not exceed $50,000 but which contain the clause at 1452.204-71 and which, in the opinion of the contracting officer, offer substantial opportunities for Indian employment, training, and subcontracting.

INDIAN PREFERENCE PROGRAM—DEPARTMENT OF THE INTERIOR (APR 1984)

(a) In addition to the requirements of the clause of this contract entitled "Indian Preference—Department of the Interior", the Contractor agrees to establish and conduct an Indian preference program which will expand the opportunities for Indian organizations and Indian-owned economic enterprises to receive a preference in the awarding of subcontracts and which will expand opportunities for Indians to receive preference for training and employment in connection with the work to be performed under this contract. In this connection, the contractor shall:

(1) Designate a liaison officer who will: (i) Maintain liaison with the Government and Tribe(s) on Indian preference matters; (ii) supervise compliance with the provisions of this clause; and (iii) administer the Contractor's Indian preference program.

(2) Advise its recruitment sources in writing and include a statement in all advertisements for employment that Indian applicants will be given preference in employment and training incident to such employment.

(3) Not less than twenty (20) calendar days prior to commencement of work under this contract, post a written notice in the

Tribal office of any reservations on which or near where the work under this contract is to be performed, which sets forth the Contractor's employment needs and related training opportunities. The notice shall include the approximate number and types of employees needed, the approximate dates of employment; the experience or special skills required for employment, if any; training opportunities available; and all other pertinent information necessary to advise prospective employees of any other employment requirements. The Contractor shall also request the Tribe(s) on or near whose reservation(s) the work is to be performed to provide assistance to the Contractor in filling its employment needs and training opportunties. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to contract in regard to the posting of notices and requests for Tribal assistance.

(4) Establish and conduct a subcontracting program which gives preference to Indian organizations and Indian-owned economic enterprises as subcontractors and suppliers under this contract. Consistent with the efficient performance of this contract, the Contractor shall give public notice of existing subcontracting opportunities by soliciting bids or proposals only from Indian organizations or Indian-owned economic enterprises. The Contractor shall request assistance and information on Indian firms qualified as suppliers or subcontractors from the Tribe(s) on or near whose reservation(s) the work under the contract is to be performed. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to be contacted in regard to the request for assistance and information. Public notices and solicitations for existing subcontracting opportunities shall provide an equitable opportunity for Indian firms to submit bids or proposals by including: (i) A clear description of the supplies or services required including quantities, specifications, and delivery schedules which facilitate the participation of Indian firms; (ii) a statement indicating the perference will be given to Indian organizations and Indian-owned economic enterprises in accordance with section 7(b) of Pub. L. 93-638; (88 Stat. 2205; 25 U.S.C. 450e(b)); (iii) definitions for the tems "Indian organization" and "Inidan-owned economic enterprise" as prescribed under the "Indian Preference—Department of the Interior" clause of this contract; (iv) a representation to be completed by the bidder or offeror that it is an Indian organization or Indian-owned economic enterprise; and (v) a closing date for receipt of bids or proposals which provides sufficient time for preparation and submission of a bid or proposal. If after soliciting bids from Indian organizations and Indian owned economic enterprises, no responsive bid is received, the Contractor shall comply with the requirements of paragraph (d) of the "Indian Preference—Department of the Interior" clause of this contract. If one or more responsive bids are received, award shall be made to the low responsible bidder if the bid price is determined to be reasonable. If the low responsive bid is determined to be unreasonable as to price, the Contractor shall attempt to negotiate a reasonable price and award a subcontract. If a reasonable price cannot be agreed upon, the Contractor shall comply with the requirements of paragraph (d) of the "Indian Preference—Department of the Interior" clause of the contract.

(5) Maintain written records under this contract which indicate: (i) The names and addresses of all Indians seeking employment for each employment position available under this contract; (ii) the number of types of positions filled by (A) Indians and (B) non-Indians, and the name, address and position of each Indian employed under this contract; (iii) for those positions where there are both Indian and non-Indian applicants, and a non-Indian is selected for employment, the reason(s) why the Indian applicant was not selected; (iv) actions taken to give preference to Indian organizations and Indian-owned economic enterprises for subcontracting opportunities which exist under this contract; (v) reasons why preference was not given to Indian firms as subcontractors or suppliers for each requirement where it was determined by the Contractor that such preference would not be consistent with the efficient performance of the contract, and (vi) the names and addresses of all Indian organizations and Indian-owned economic enterprises (A) contacted, and (B) receiving subcontract awards under this contract.

(6) The Contractor shall submit to the Contracting Officer for approval a semiannual report which summarizes the Contractor's Indian preference program and indicates (i) the number and types of available positions filled and dollar amounts of all subcontracts awarded to (a) Indian organizations and Indian-owned economic enterprises and (b) all other firms.

(7) Records maintained pursuant to this clause will be kept available for review by the Government until expiration of one (1) year after final payment under this contract, or for such longer period as may be required by any other clause of this contract or by applicable law or regulation.

(b) For purposes of this clause, the following definitions of terms shall apply:

(1) The terms "Indian," "Indian Tribe," "Indian Organization," and "Indian-owned economic enterprise" are defined in the clause of this contract entitled "Indian Preference."

(2) "Indian reservation" includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 et seq.).

(3) "On or near an Indian Reservation" means on a reservation or reservations or within that area surrounding an Indian reservation(s) where a person seeking employment could reasonably be expected to commute to and from in the course of a workday.

(c) Nothing in the requirements of this clause shall be interpreted to preclude Indian Tribes from independently developing and enforcing their own Indian preference requirements. Such requirements must not hinder the Government's right to award contracts and to administer their provisions.

(d) The Contractor agrees to include the provisions of this clause including this paragraph (d) in each subcontract awarded under this contract and to notify the Contracting Officer of such subcontracts.

(e) In the event of noncompliance with this clause, the Contractor's right to proceed may be terminated in whole or in part by the Contracting Officer and the work completed in a manner determined by the Contracting Officer to be in the best interest of the Government.

(End of clause)

1452.210-70 Brand Name or Equal.

As prescribed in 1410.004-70(b)(3), insert the following provision in solicitations which contain a "brand name or equal" purchase decription:

Brand Name or Equal—Department of the Interior (Apr 1984)

(As used in this clause, the term "brand name" includes identification of products by make and model.)

(a) If items called for by this solicitation have been identified in the schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids or proposals offering "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the bids or proposals and are determined by the Government to meet fully the salient characteristics requirements listed in the solicitation.

(b) Unless the bidder/offeror clearly indicates in its bid that it is offering an "equal" product, its bid shall be considered as offering a brand name product referenced in the solicitation.

(c)(1) If the bidder/offeror proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the solicitation, or such product shall be otherwise clearly identified in the bid or proposal. The evaluation of bids or proposals and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder/offeror or identified in its bid or proposal as well as other information reasonably available to the contracting activity. Caution to Bidders/Offerors: The contracting activity is not responsible for locating or securing any information which is not identified in the bid or proposal and reasonably available to the contracting activity. Accordingly, to assure that sufficient information is available, the bidder/offeror must furnish as a part of its bid or proposal all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting activity to: (i) Determine whether the product offered meets the salient characteristics requirement of the solicitation; and (ii) establish exactly what the bidder proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific reference to information previously furnished or to information otherwise available to the contracting activity.

(2) If the bidder/offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, it shall: (i) Include in its bid or proposal a clear description of such proposed modifications; and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after bid opening to make a product conform to a brand name product referenced in the solicitation will not be considered.

1452.215-70 Examination of Records by the Department of the Interior.

As prescribed in 1415.106-1, insert the following clause in all contracts containing the clause at FAR 52.215-1, Examination of Records by the Comptroller General (see FAR 15.106-1(b)):

Examination of Records by the Department of the Interior (Apr 1984)

For purposes of the Examination of Records by the Comptroller General (APR 1984) clause of this contract (FAR 52.214-1), the Secretary of the Interior, the Inspector General, and their duty authorized representative(s) from the Department of the Interior shall have the same access and examination rights as the Comptroller General of the United States.

(End of clause)

1452.215-71 Use and Disclosure of Proposal Information.

As prescribed in 1415.413-70, insert the following provision in requests for proposals and requests for quotations instead of the provision at FAR 52.215-12:

USE AND DISCLOSURE OF PROPOSAL INFORMATION—DEPARTMENT OF THE INTERIOR (APR 1984)

(a) Definitions. For the purposes of this provision and the Freedom of Information Act (5 U.S.C. 552), the following terms shall have the meaning set forth below:

(1) "Trade Secret" means an unpatented, secret, commercially valuable plan, appliance, formula, or process, which is used for making, preparing, compounding, treating or processing articles or materials, which are trade commodities.

(2) "Confidential commercial or financial information" means any business information (other than trade secrets) which is exempt from the mandatory disclosure requirement of the Freedom of Information Act, 5 U.S.C. 552. Exemptions from mandatory disclosure which may be applicable to business information contained in proposals include exemption (4), which covers "commercial and financial information obtained from a person and privileged or confidential," and exemption (9), which covers "geological and geophysical information, including maps, concerning wells."

(b) If the offeror, or its subcontactor(s), believes that the proposal contains trade secrets or confidential commercial or financial information exempt from disclosure under the Freedom of Information Act, (5 U.S.C. 552), the cover page of each copy of the proposal shall be marked with the following legend:

"The information specifically identified on pages —— of this proposal constitutes trade secrets or confidential commercial and financial information which the offeror believes to be exempt from disclosure under the Freedom of Information Act. The offeror requests that this information not be disclosed to the public, except as may be required by law. The offeror also requests that this information not be used in whole or part by the Government for any purpose other than to evaluate the proposal, except that if a contract is awarded to the offeror as a result of or in connection with the submission of the proposal, the Government shall have the right to use the information to the extent provided in the contract."

(c) The offeror shall also specifically identify trade secret information and confidential commerical and financial information on the pages of the proposal on which it appears and shall mark each such page with the following legend:

"This page contains trade secrets or confidential commercial and financial information which the offeror believes to be exempt from disclosure under the Freedom of Information Act and which is subject to the legend contained on the cover page of this proposal."

(d) Information in a proposal identified by an offeror as trade secret information or confidential commercial and financial information shall be used by the Government only for the purpose of evaluating the proposal, except that: (i) If a contract is awarded to the offeror as a result of or in connection with submission of the proposal, the Government shall have the right to use the information as provided in the contract, and (ii) if the same information is obtained from another source without restriction it may be used without restriction.

(e) If a request under the Freedom of Information Act seeks access to information in a proposal identified as trade secret information or confidential commercial and financial information, full consideration will be given to the offeror's view that the information constitutes trade secrets or confidential commercial or financial information. The offeror will also be promptly notified of the request and given an opportunity to provide additional evidence and argument in support of its position, unless administratively unfeasible to do so. If it is determined that information claimed by the offeror to be trade secret information or confidential commercial or financial information is not exempt from disclosure under the Freedom of Information Act, the offeror will be notified of this determination prior to disclosure of the information.

(f) The Government assumes no liability for the disclosure or use of information contained in a proposal if not marked in accordance with paragraphs (b) and (c) of this provision. If a request under the Freedom of Information Act is made for information in a proposal not marked in accordance with paragraphs (b) and (c) of this provision, the offeror concerned shall be promptly notified of the request and given an opportunity to provide its position to the Government. However, failure of an offeror to mark information contained in a proposal as trade secret information or confidential commercial or financial information will be treated by the Government as evidence that the information is not exempt from disclosure under the Freedom of Information Act absent a showing that the failure to mark was due to unusual or extenuating circumstances, such as a showing that the offeror had intended to mark, but that markings were omitted from the offeror's proposal due to clerical error.

(End of provision)

1452.224-1 Privacy Act Notification.

(a) As prescribed in 1424.104, the clause at FAR 52.224-1, Privacy Act Notification, shall be modified before insertion into solicitations and contract by—

(1) Changing the title of the clause to read "Privacy Act Notification (Apr. 1984) (Deviation)"; and

(2) Adding the following sentence to the end of the clause:

Applicable Department of the Interior regulations are set forth in 43 CFR 2, Subpart D, and may be obtained by submitting a written request to the Privacy Act Officer, Office of the Assistant Secretary—Policy, Budget and Administration, Department of the Interior, Washington, DC 20240.

(b) As prescribed in FAR 52.103(a) and 52.107(f), the clause at FAR 52.252-6, Authorized Deviation in Clauses, shall be inserted into solicitations and contracts containing the clause in paragraph (a) of this section.

1452.225-70 Buy American Act Notice.

As prescribed in 1425.205, insert the following provision in solicitations for construction inside the United States:

BUY AMERICAN ACT NOTICE—DEPARTMENT OF THE INTERIOR (APR 1984)

(a) The Buy American Act (41 U.S.C. 10) generally requires that only domestic construction material be used in the performance of this contract (see the clause titled "Buy American Act—Construction Materials"). This requirement does not apply to the following construction materials:

(List excepted material or indicate "none")

(b) Offers based on the use of other foreign construction material may be acceptable for award if the Government determines that—

(1) Comparable domestic construction material in sufficient and reasonably available quantities, of a satisfactory quality, is unavailable; or

(2) Use of comparable domestic construction material is impracticable or would unreasonably increase the cost.

(c) Any offer based on the use of one or more other foreign construction materials shall include data, in the format listed in paragraph (e) below, clearly demonstrating that the cost of each foreign construction material, plus 6 percent, is less than the cost of each comparable domestic construction material. The cost of construction material shall be computed to include all delivery costs to the construction material and shall also include any applicable duty (whether or not a duty-free entry certificate may be issued).

(d) For evaluation purposes, the Government shall add to the offer 6 percent of the cost of foreign material which qualifies for acceptance under paragraph (c) of this section.

(e) For foreign construction material which does not qualify for acceptance under paragraph (c) above, the Government shall evaluate the offer on the basis of the stated price for comparable domestic construction material, and the offeror shall be required to furnish such domestic construction material at that price. *Therefore, if the offer does not state a price for a comparable domestic construction material, and the foreign construction material does not qualify for acceptance under paragraph (c) of this section, the offer shall be rejected as nonresponsive.*

(f) For evaluation purposes under paragraph (c) of this section, the following information shall be included in the offer for the use of one or more foreign construction materials:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS COST COMPARISON

Construction material description	Unit	Quantity	Cost including all delivery costs to construction site [1] (dollars)
Item 1:			
Foreign construction material			$
Comparable domestic construction material.			$
Item 2:			
Foreign construction material.			$
Comparable domestic construction material.			$

[1] Also include applicable duty for foreign material.

(End of provision)

1452.228-7 Insurance—Liability to Third Persons.

(a) As prescribed in 1428.311-2, the clause at FAR 52.228-7, Insurance—Liability to Third Persons, shall be modified before insertion into solicitations and contracts by—

(1) Changing the title of the clause to read "Insurance—Liability to Third Persons (Apr. 1984) (Deviations)"; and

(2) Changing the first sentence in subparagraph (c)(2) of the clause to read "For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise but subject to the 'Limitation of Cost' or 'Limitation of Funds' clause of this contract."

(b) As prescribed in FAR 52.103(a) and 52.107(f), the clause at FAR 52.252-6, Authorized Deviations in Clauses, shall be inserted into solicitations and contracts containing the clause in paragraph (a) of this section.

1452.228-70 Liability Insurance.

As prescribed in 1428.301, insert the following clause in all contracts where circumstances warrant the carrying of insurance by the contractor (see FAR 28.301 and 28.306):

Liability Insurance—Department of the Interior (Jul 1985)

(a) The Contractor shall procure and maintain during the term of this contract and any extension thereof liability insurance in form satisfactory to the Contracting Officer by an insurance company which is acceptable to the Contracting Officer. The name insured parties under the policy shall be the Contractor and the United States of America. The amounts of the insurance shall be not less than as follows:

$—— each person.*
$—— each occurrence.*
$—— property damage.*

(b) Each policy or certificate evidencing the insurance shall contain an endorsement which provides that the insurance company will notify the Contracting Officer 30 days prior to the effective date of any cancellation or termination of the policy or certificate or any modification of the policy or certificate which adversely affects the interest of the Government in such insurance. The notice shall be sent by registered mail and shall identify this contract, the name and address of the contracting office, the policy and the insured.

(c) Prior to the commencement of work hereunder the Contractor shall furnish the Contracting Officer with acceptable evidence showing that the insurance coverage described in this clause has been obtained.

*These amounts to be set by the Contracting Officer.

(End of clause)

[49 FR 14267, Apr. 10, 1984, as amended at 51 FR 41966, Nov. 20, 1986]

1452.228-71 Aircraft and general public liability.

As prescribed in 1428.306-70(c)(1), insert the following clause in all fixed-price contracts for operation of aircraft with contractor-furnished pilot:

Aircraft and General Public Liability Insurance—Department of the Interior ( )

(a) The contractor, at the contractor's expense, agrees to maintain, during the continuance of this contract, aircraft liability and general public liability insurance with limits of liability for (1) bodily injury to or death of aircraft passengers of not less than $75,000 for any one passenger and a limit for each occurance in any one aircraft of at least an amount equal to the sum produced by multiplying $75,000 by 75 percent of the total number of passenger seats installed in the aircraft, (2) bodily injury or death of persons (excluding passengers) of not less than $75,000 for any one person in any one occurrence and $300,000 for each occurrence, and (3) property damage of not less than $100,000 for each occurrence, or (4) a single limit of liability for each occurrence equal to or greater than the combined required minimums set forth in (1) through (3) above.

(b) The contractor agrees to maintain workers' compensation and other legally required insurance with respect to the contractor's own employees and agents.

(End of clause)

[54 FR 10989, Mar. 16, 1989]

1452.228-72 Liability for Loss or Damage.

As prescribed in 1428.306-70(c)(2), insert the following clause in all fixed-price contracts involving the use of aircraft with Government-furnished pilot where the Government does not have a property interest in the aircraft:

LIABILITY FOR LOSS OR DAMAGE—DEPARTMENT OF THE INTERIOR (APR 1984)

(a) The Contractor shall indemnify and hold the Government harmless from any and all loss or damage to the aircraft furnished under this contract except as provided in paragraph (d) of this clause. For the purpose of fulfilling its obligation under this clause, the Contractor shall procure and maintain during the term of this contract, and any extension thereof, hull insurance acceptable to the Contracting Officer. The Contractor's insurance coverage shall apply to pilots furnished by the Government who operate the aircraft. The contractor may request a list of Government pilots by name and qualification who are potential pilots.

(b) Prior to the commencement of work hereunder, the Contractor shall furnish to the Contracting Officer a copy of the insurance policy or policies or a certificate of insurance issued by the underwriter(s) showing that the coverage required by this clause has been obtained.

(c) Each policy or certificate evidencing the insurance shall contain an endorsement which provides that the insurance company will notify the Contracting Officer 30 days prior to the effective date of any cancellation or termination of any policy or certificate or any modification of a policy or certificate which adversely affects the interests of the Government in such insurance. The notice shall be sent by registered mail and shall identify this contract, the name and address of the contracting office, the policy, and the insured.

(d) If the aircraft is damaged or destroyed while in the custody and control of the Government, the Government will reimburse the Contractor for the deductible stipulated in the insurance coverage (if any) as follows:

(1) In-Motion Accidents—Up to 5% of the current insured value of the aircraft stated in the policy, or $10,000.00, whichever is less.

(2) Not In-Motion Accidents—Up to $250.00 per accident. Such reimbursement shall not be made, however, for loss or damage to the aircraft resulting from: (1) Normal wear and tear, (2) negligence or fault in maintenance of the aircraft by the Contractor, or (3) a defect in construction of the aircraft or a component thereof.

(e) If damage to the aircraft is established to be the fault of the Government, rental payments to the Contractor during the repair period will be made as set forth elsewhere in this contract. The Government may, at its option, make necessary repairs or return the aircraft to the Contractor for repair. In the event the aircraft is lost, destroyed, or damaged so extensively as to be beyond repair, no rental payment will be made to the Contractor thereafter.

(f) Any failure to agree as to the responsibility of the Government or the Contractor under this clause shall, after a final finding and determination by the Contracting Officer, be considered a dispute within the meaning of the "Disputes" clause of this contract.

(End of clause)

1452.228-73 Liability for Loss or Damage (Property Interest).

As prescribed in 1428.306-70(c)(3), insert the following clause in all fixed price contracts involving the use of aircraft with Government-furnished pilot where the Government has a property interest in the aircraft (e.g., lease with purchase option):

LIABILITY FOR LOSS OR DAMAGE—DEPARTMENT OF THE INTERIOR (APR 1984)

(a) The Government assumes all risk and liability for damage to or loss of the aircraft for the term of this contract, while the aircraft is in the Government's possession, except for: (1) Normal wear and tear to the aircraft, or (2) loss which occurs as a result of negligence or fault in maintenance of the aircraft by the contractor, or (3) loss resulting from a latent defect in the construction of the aircraft or a component thereof.

(b) In the event of damage to the aircraft, the Government may, at its option, make the necessary repairs with its own facilities, or by contract, or pay the Contractor the reasonable cost of repair of the aircraft. If damage to the aircraft is established to be the fault of the Government, rental payments to the Contractor during the repair period will be made as set forth elsewhere in this contract.

(c) In the event the aircraft is lost, destroyed, or damaged so extensively as to be beyond repair, no rental payment will be made to the Contractor thereafter, but the Government will pay to the Contractor a sum equal to the fair market value of the aircraft just prior to such loss, destruction, or extensive damage less the salvage value of the aircraft.

(d) The Contractor certifies that the contract price does not include any cost attributable to insurance or to any reserve fund it has established to protect its interests in or use of the aircraft, regardless of whether or not the insurance coverage applies for the period during which the Government has possession of the aircraft. If, in the event of loss or damage to the aircraft, the Contractor receives compensation for such loss or damage, in any form, from any source, the amount of such compensation shall be credited to the Government in determining the amount of the Government's liability under this clause; except that this shall not apply to proceeds of insurance received solely as an advance of insurance pending determination of Government liability, or for an increment of value of the aircraft beyond the value for which the Government is responsible.

(e) In the event of loss or damage, the Government shall be subrogated to all rights of recovery by the Contractor against third parties for such loss or damage and such rights shall be immediately assigned to the Government. Except as the Contracting Officer may permit in writing, the Contractor shall neither release nor discharge any third party from liability for such loss or damage nor otherwise compromise or adversely affect the Government's subrogation or other rights hereunder. The Contractor shall cooperate with the Government in any suit or action undertaken by the Government against any such third party.

(f) Any failure to agree as to the responsibility of the Government or the Contractor under this clause shall, after a final finding and determination by the Contracting Officer, be considered a dispute within the meaning of the "Disputes" clause of this contract.

(End of clause)

1452.233-2 Service of Protest.

(a) As prescribed in 1433.106, the provision at FAR 52.233-2, Service of Protest, shall be modified before insertion into solicitations by—

(1) Changing the title of the provision to read "SERVICE OF PROTEST (JAN 1985) (DEVIATION)"; and

(2) Adding the following sentence to the end of the provision:

> A copy of the protest served on the contracting officer shall be simultaneously furnished by the protester to the Assistant Solicitor for Procurement and Patents, Office of the Solicitor, Room 6511, U.S. Department of the Interior, 18th and C Streets, NW., Washington, DC 20240.

(b) As prescribed in FAR 52.103(a) and 52.107(f), the clause at FAR 52.252-6, Authorized Deviations in Clauses, shall be inserted into solicitations and contracts containing the clause in paragraph (a) of this section.

[51 FR 8831, Mar. 19, 1986]

1452.236-70 Prohibition Against Use of Lead-based Paint.

As prescribed in 1436.570, insert the following clause in solicitations and contracts when construction of residential structures or rehabilitation (including dismantling, demoiltion, or removal) of residential structures is contemplated:

PROHIBITION AGAINST USE OF LEAD-BASED PAINT—DEPARTMENT OF THE INTERIOR (APR 1984)

No lead-based paint containing more than .5 of 1 percent lead by weight (calculated as lead metal) in the total nonvolatile content of paint, or the equivalent measure of lead in the dried film of paint already applied, or both, or with respect to paint manufactured after June 23, 1977, no lead-based paint containing more than .06 of 1 percent lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both, shall be used in the construction or rehabilitation of residential structures under this contract or any resulting subcontracts.

(End of clause)

1452.237-70 Information Collection.

As prescribed in 1437.7103, insert the following clause in solicitations and contracts where collection of information upon identical items from ten or more public respondents is required or may be required:

INFORMATION COLLECTION—DEPARTMENT OF THE INTERIOR (APR 1984)

If performance of this contract requires the contractor to collect information upon identical items from ten or more public respondents, no action shall be taken or funds expended in the solicitation or collection of such information until the contractor has received from the Contracting Officer written notification that approval has been obtained from the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980. The Contractor agrees to provide all information requested by the Contracting Officer which is necessary to obtain approval from OMB.

(End of clause)

PART 1453—FORMS

Sec.
1453.000 Scope of part.

Subpart 1453.2—Prescription of Forms

1453.200 Department of the Interior forms
1453.204 Administrative matters.
1453.204-70 Release of Claims (DI-137).

Sec.

1453.215 Contracting by negotiation.
1453.215-71 Structured Approach for Profit/Fee Objective (DI-1920).
1453.219 Small business and small disadvantaged business concerns.
1453.219-71 Sample Subcontracting Plan Outline.
1453.219-72 Performance Evaluation (8(a)) (DI-1919).
1453.219-73 Subcontracting plan review.
1453.232 Contract financing.
1453.232-70 Assignment of claims (DI's 83, 84).

Subpart 1453.3—Illustrations of Forms

1453.300 Scope of subpart.
1453.303 Agency forms.
1453.303-DI-83 Department of the Interior, Form DI-83, Notice of Assignment.
1453.303-DI-84 Department of the Interior, Form DI-84, Instrument of Assignment.
1453.303-DI-137 Department of the Interior, Form DI-137, Release of Claims.
1453.303-DI-1919 Department of the Interior, Form DI-1919, Performance Evaluation 8(a)).
1453.303-DI-1920 Department of the Interior, Form DI-1920, Structured Approach for Profit/Fee Objective.
1453.303-70 Sample subcontracting plan outline format.
1453.303-71 Format for review of contractor's subcontracting program.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

SOURCE: 49 FR 14272, Apr. 10, 1984, unless otherwise noted.

1453.000 Scope of part.

This part (a) prescribes Department of the Interior (DI) forms for use in acquisition, (b) illustrates these forms, and (c) contains procedures for exceptions to forms prescribed in FAR Part 53 or this Part 1453.

Subpart 1453.2—Prescription of Forms

1453.200 Department of the Interior forms.

This subpart prescribes Department of the Interior (DI) forms for use in acquisition. Consistent with the approach used in FAR Subpart 53.2, this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the DIAR in which the form usage requirements are addressed.

1453.204 Administration matters.

1453.204-70 Release of Claims (DI-137).

DI-137, Release of Claims, is prescribed for use in obtaining a contractor release of claims as specified in 1404.804-70.

1453.215 Contracting by negotiation.

1453.215-71 Structured Approach for Profit/Fee Objective (DI-1920).

Form DI-1920, Structured Approach for Profit/Fee Objective—Department of the Interior is prescribed for use in calculating the profit or fee prenegotiation objective as required in 1415.905.

1453.219 Small business and small disadvantaged business concerns.

1453.219-71 Sample Subcontracting Plan Outline.

The Sample Subcontracting Plan Outline Format is prescribed for use in requesting subcontracting plans as specified in 1419.705-70.

1453.219-72 Performance Evaluation (8(a)) (DI-1919).

DI-1919, Performance Evaluation (8(a)), is prescribed for use in evaluating the performance of SBA 8(a) contractors as specified in 1419.810-70.

1453.219-73 Subcontracting plan review.

The format shown in 1453.303-71 shall be used in documenting the results of the management review required in 1419.705-6.

[51 FR 41966, Nov. 20, 1986]

1453.232 Contract financing.

1453.232-70 Assignment of claims (DI's 83, 84).

The following forms are prescribed for use in connection with making a written notice of assignment as specified in FAR Subpart 32.8 and Subpart 1432.8:

(a) DI-83 (1/72), Notice of Assignment. (See 1432.805.)

(b) DI-84 (1/72), Instrument of Assignment. (See 1432.805.)

Subpart 1453.3—Illustrations of Forms

1453.300 Scope of subpart.

This subpart contains illustrations of Department of the Interior (DI) forms used in acquisition as prescribed by the DIAR.

1453.303 Agency forms.

This section illustrates Department of the Interior (DI) forms specified by the DIAR for use in acquisition. The forms are illustrated in numerical order. The subsection numbers correspond with the DI numbers.

1453.303-DI-83 Department of the Interior, Form DI-83, Notice of Assignment.

Form DI-83
(January 1972)

UNITED STATES
DEPARTMENT OF THE INTERIOR

NOTICE OF ASSIGNMENT

SEE INSTRUCTIONS ON REVERSE BEFORE COMPLETING FORM

To: *(check one)*

☐ Contracting Officer, or

☐ Surety ____________ (Name)

Re Contract Number ____________ Dated ____________

With ____________ (Contractor) of ____________ (City) (State) (Zip Code)

For ____________ (Project Identification)

PLEASE TAKE NOTICE that moneys due or to become due under the contract described above have been assigned to the undersigned pursuant to the provisions of the Assignment of Claims Act of 1940, as amended, 54 Stat. 1029, 65 Stat. 41 (31 U.S.C. 203, 41 U.S.C. 15). A true copy of the instrument of assignment executed by the contractor on *(date)* ____________, is attached to the original hereof.

Payments due or to become due under such contract shall be made to the undersigned assignee.

Please complete and return all copies of this Notice as indicated on the reverse hereof.

____________ (Name of Assignee) By ____________ (Name and Title of Officer of Assignee)

____________ (Street Address) ____________ (Signature)

____________ (City) (State) (Zip Code) ____________ (Date)

Receipt is hereby acknowledged of the above Notice and a copy of the instrument of assignment. These were received at ______ ☐ a.m. ☐ p.m., on *(date)* ______

FOR USE OF CONTRACTING OFFICER	*FOR USE OF SURETY*
____________ (Name of Contracting Officer)	____________ (Surety Name)
	By ____________ (Name and Title of Signing Officer)
____________ (Signature)	____________ (Signature of Surety Officer)

INSTRUCTIONS

Under the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), moneys due or to become due from the United States under a contract providing for payments aggregating $1,000 or more may be assigned to a bank, trust company, Federal lending agency, or other recognized financing institution in the absence of a contract provision forbidding assignment. Unless otherwise permitted by the contract: (1) an assignment must cover all further amounts payable under the contract; (2) shall not be subject to further assignment, and (3) shall not be made to more than one party, except that assignment may be made to one party acting as agent or trustee for two or more parties participating in the financing. The assignee is required to provide a notice of assignment to the Contracting Officer, to the surety, if there is one, and to the disbursing officer, if any, designated in the contract to make payments.

In order to avoid possible invalidity of an assignment, and to provide a notice of assignment to all parties concerned, the following instructions should be followed carefully:

1. *Assignee:*

(a) Send an original and two copies of this *Notice of Assignment* (DI-83), together with one true copy* of an instrument of assignment**, *to the Contracting Officer.*

(b) Send by certified mail, return receipt requested, another original and three copies of this Notice of Assignment, together with one true copy* of the instrument of assignment, *to the surety*—if bond(s) were provided by a surety under the contract. *(See Instruction 4 below for additional required action by assignee.)*

2. *Contracting Officer:*

(a) Acknowledge receipt of this Notice of Assignment on the original and all copies.

(b) Forward one acknowledged copy of this Notice of Assignment plus the true copy of the instrument of assignment *to the appropriate finance officer.*

(c) Return one acknowledged copy of this Notice of Assignment *to the assignee.*

(d) Retain the original Notice of Assignment.

3. *Surety:*

(a) Acknowledge receipt of this Notice of Assignment on the original and all copies.

(b) Return three acknowledged copies of this Notice of Assignment *to the assignee.*

(c) Retain the original Notice of Assignment and the true copy of the instrument of assignment.

4. *Assignee:*

(a) Retain one copy of this Notice of Assignment acknowledged by the surety.

(b) Forward two copies of this Notice of Assignment acknowledged by the surety, *to the Contracting Officer.* If the surety has refused to acknowledge receipt of this Notice of Assignment, the assignee *must* prepare an affidavit to that effect, attach the postal return receipt which covered the mailing of this Notice of Assignment to the surety, and forward them *to the Contracting Officer.*

5. *Contracting Officer:*

(a) Retain either the affidavit and postal receipt from the assignee or one of the copies of this Notice of Assignment acknowledged by the surety.

(b) Forward a copy of the affidavit, or the copy of this Notice of Assignment acknowledged by the surety *to the appropriate finance officer.*

---

* *A true copy of an instrument of assignment may be a*

(a) complete machine copy of the original,

(b) complete duplicate copy of the original; or

(c) certified copy of the original, typewritten or otherwise, if it is accurate and complete in all respects and is accompanied by a certificate, executed by a Notary Public or other officer legally authorized to administer oaths, to the effect that it is a true copy.

** *DI-84 completed, may be used as the instrument of assignment.*

1453.303–DI–84 Department of the Interior, Form DI–84, Instrument of Assignment.

Form DI–84
(January 1972)

UNITED STATES
DEPARTMENT OF THE INTERIOR

INSTRUMENT OF ASSIGNMENT

KNOW ALL MEN THAT pursuant to the provisions of the Assignment of Claims Act of 1940 as amended (31 U.S.C. 203, 41 U.S.C. 15), for value received, the undersigned Assignor (Contractor) does hereby assign irrevocably unto of as Assignee, all right, title, and interest in all moneys now due or to become due from, and not already paid by the United States of America under Contract No. , dated , for , previously entered into by and between the United States of America and the Assignor. The Assignor states that no previous assignment has been made, and no additional assignment will be made under the said contract, and authorizes payment of moneys now due or to become due to be made by checks drawn to the order of the said Assignee.

IN WITNESS WHEREOF, The undersigned Assignor has caused this assignment to be executed this day of 19

(Assignor) By (Signature)

(Street Number or R.F.D.) (Name)

(City) (State) (Zip Code) (Title)

ACKNOWLEDGMENT
(Complete only if Assignor is an individual or partnership)

State of)
ss:
County of)

I, , a Notary Public in and for the County of , State of , do hereby certify that on this day of , 19 , personally appeared before me the above signator , to me personally known, who, being by me duly sworn, duly acknowledged the execution of the above assignment to be his voluntary act and deed.

[NOTARIAL SEAL]

My commission expires (Signature of Notary Public)

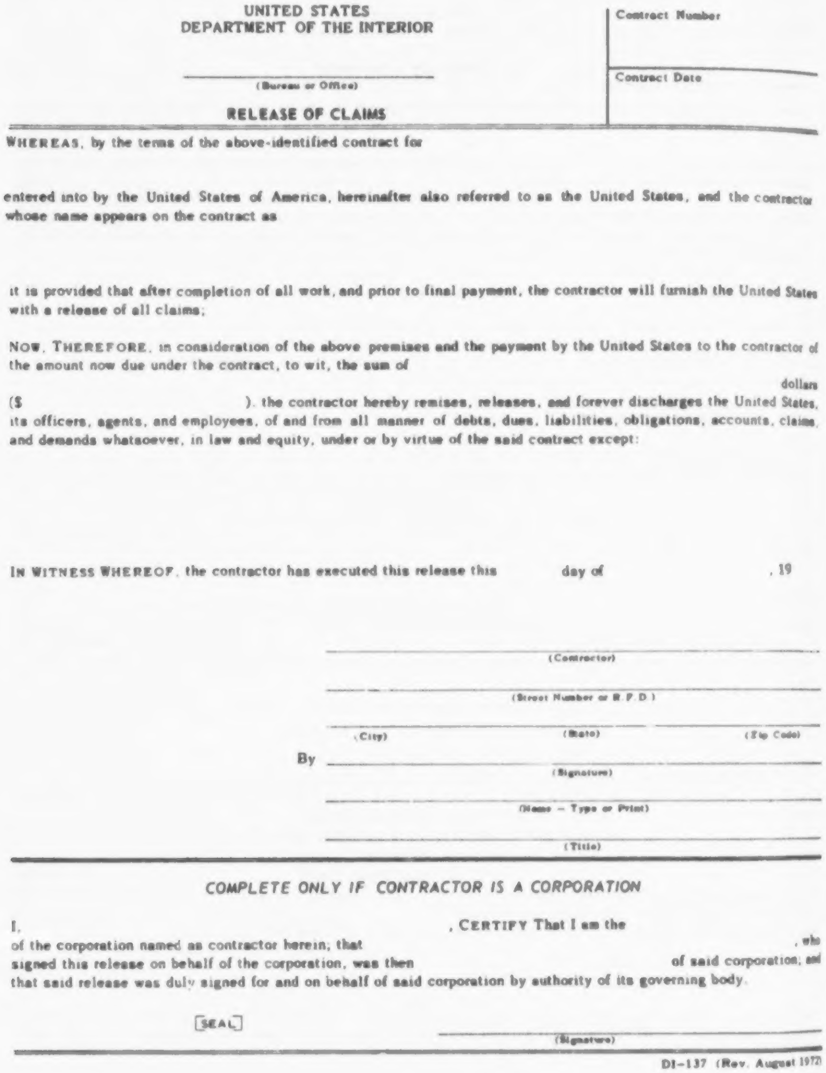
AUTHORITY TO MAKE ASSIGNMENT
(Complete only if Assignor is a corporation)

I, certify that I am of the corporation named as Assignor herein, that who executed this assignment on behalf of the said corporation was then of the said corporation, acting for and on its behalf by authority of its governing body.

[SEAL]

(Date) (Signature)

1453.303-DI-137 Department of the Interior, Form DI-137, Release of claims.



UNITED STATES
DEPARTMENT OF THE INTERIOR

(Bureau or Office)

Contract Number

Contract Date

RELEASE OF CLAIMS

WHEREAS, by the terms of the above-identified contract for

entered into by the United States of America, hereinafter also referred to as the United States, and the contractor whose name appears on the contract as

it is provided that after completion of all work, and prior to final payment, the contractor will furnish the United States with a release of all claims;

NOW, THEREFORE, in consideration of the above premises and the payment by the United States to the contractor of the amount now due under the contract, to wit, the sum of dollars ($). the contractor hereby remises, releases, and forever discharges the United States, its officers, agents, and employees, of and from all manner of debts, dues, liabilities, obligations, accounts, claims, and demands whatsoever, in law and equity, under or by virtue of the said contract except:

IN WITNESS WHEREOF, the contractor has executed this release this day of , 19

(Contractor)

(Street Number or R.F.D.)

(City) (State) (Zip Code)

By

(Signature)

(Name — Type or Print)

(Title)

COMPLETE ONLY IF CONTRACTOR IS A CORPORATION

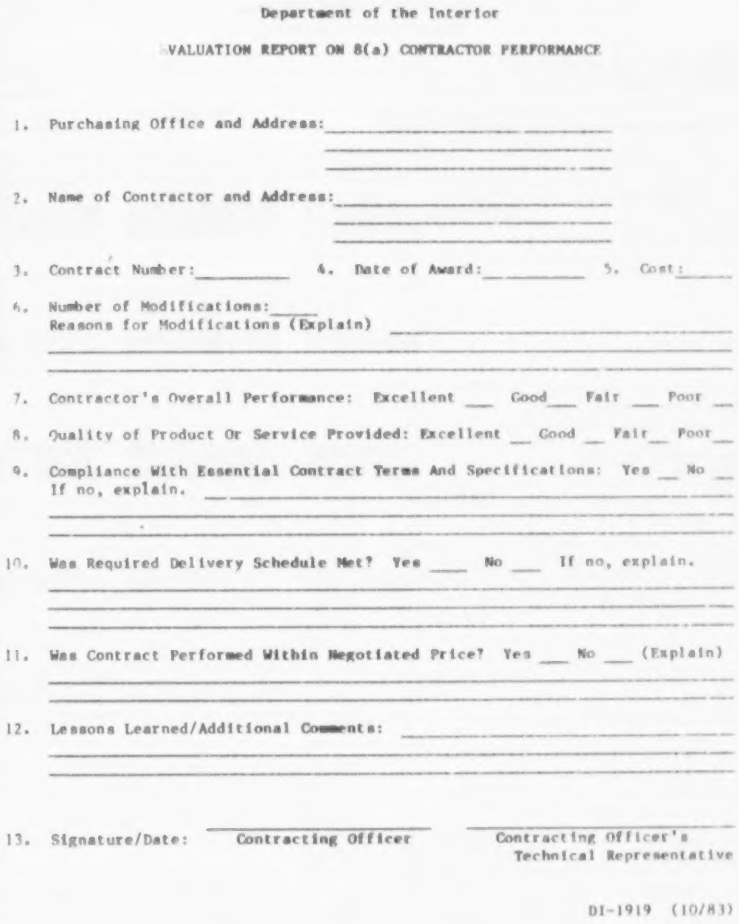
I, , CERTIFY That I am the of the corporation named as contractor herein; that , who signed this release on behalf of the corporation, was then of said corporation; and that said release was duly signed for and on behalf of said corporation by authority of its governing body.

[SEAL]

(Signature)

DI-137 (Rev. August 1972)

1453.303-DI-1919 Department of the Interior, Form DI-1919, Performance Evaluation (8(a)).



Department of the Interior

EVALUATION REPORT ON 8(a) CONTRACTOR PERFORMANCE

1. Purchasing Office and Address: ______________________

2. Name of Contractor and Address: ______________________

3. Contract Number: ________ 4. Date of Award: ________ 5. Cost: _____

6. Number of Modifications: _____
Reasons for Modifications (Explain) ______________________

7. Contractor's Overall Performance: Excellent ___ Good ___ Fair ___ Poor ___

8. Quality of Product Or Service Provided: Excellent ___ Good ___ Fair ___ Poor ___

9. Compliance With Essential Contract Terms And Specifications: Yes ___ No ___
If no, explain. ______________________

10. Was Required Delivery Schedule Met? Yes ___ No ___ If no, explain.
____

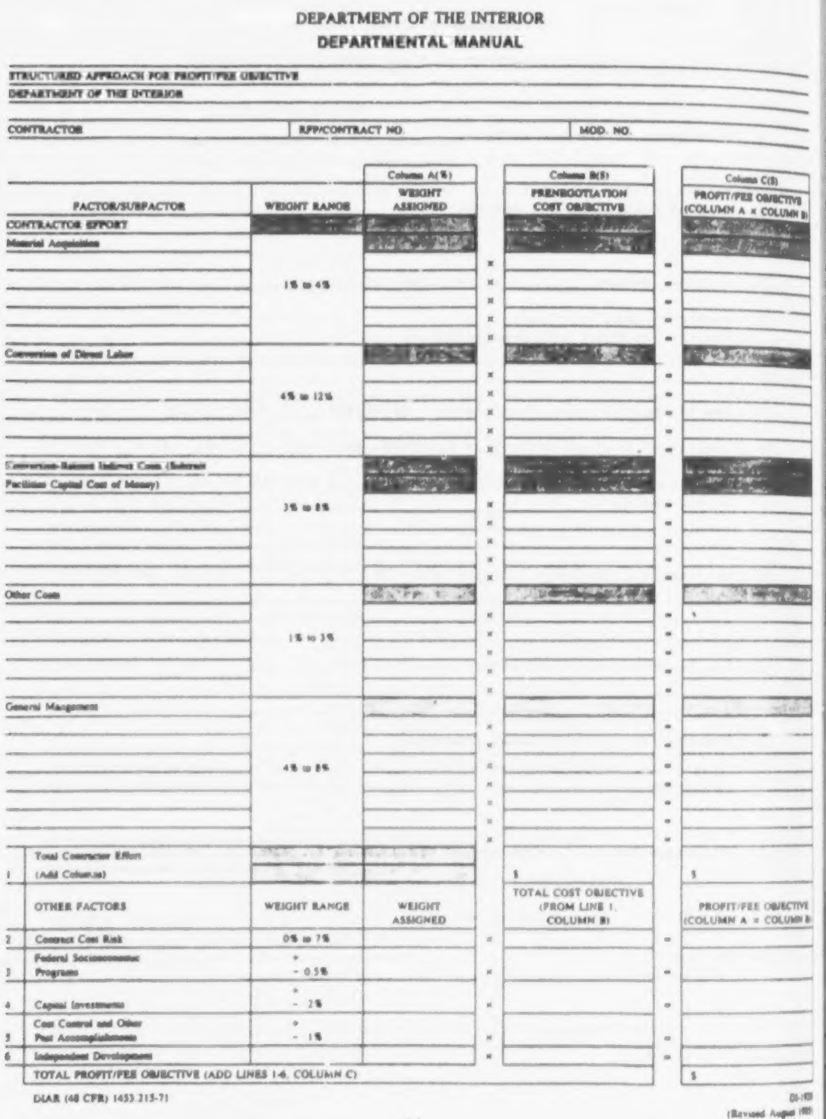
11. Was Contract Performed Within Negotiated Price? Yes ___ No ___ (Explain)
____

12. Lessons Learned/Additional Comments: ______________________

13. Signature/Date: ______________ Contracting Officer ______________ Contracting Officer's Technical Representative

DI-1919 (10/83)

1453.303-DI-1920 Department of the Interior, Form DI-1920, Structured Approach for Profit/Fee Objective.



DEPARTMENT OF THE INTERIOR

DEPARTMENTAL MANUAL

STRUCTURED APPROACH FOR PROFIT/FEE OBJECTIVE

DEPARTMENT OF THE INTERIOR

CONTRACTOR | RFP/CONTRACT NO. | MOD. NO.

	FACTOR/SUBFACTOR	WEIGHT RANGE	Column A(%) WEIGHT ASSIGNED		Column B($) PRENEGOTIATION COST OBJECTIVE		Column C($) PROFIT/FEE OBJECTIVE (COLUMN A × COLUMN B)
	CONTRACTOR EFFORT						
	Material Acquisition	1% to 4%					
				×		=	
				×		=	
				×		=	
				×		=	
				×		=	
	Conversion of Direct Labor	4% to 12%					
				×		=	
				×		=	
				×		=	
				×		=	
				×		=	
	Conversion-Related Indirect Costs (Subtract Facilities Capital Cost of Money)	3% to 8%					
				×		=	
				×		=	
				×		=	
				×		=	
				×		=	
	Other Costs	1% to 3%					
				×		=	
				×		=	
				×		=	
				×		=	
				×		=	
	General Mangement	4% to 8%					
				×		=	
				×		=	
				×		=	
				×		=	
				×		=	
				×		=	
				×		=	
1	Total Contractor Effort (Add Columns)				$		$
	OTHER FACTORS	WEIGHT RANGE	WEIGHT ASSIGNED		TOTAL COST OBJECTIVE (FROM LINE 1, COLUMN B)		PROFIT/FEE OBJECTIVE (COLUMN A × COLUMN B)
2	Contract Cost Risk	0% to 7%		×		=	
3	Federal Socioeconomic Programs	+ - 0.5%		×		=	
4	Capital Investments	+ - 2%		×		=	
5	Cost Control and Other Past Accomplishments	+ - 1%		×		=	
6	Independent Development			×		=	
	TOTAL PROFIT/FEE OBJECTIVE (ADD LINES 1-6, COLUMN C)						$

DIAR (48 CFR) 1453.215-71

DI-19

(Revised August 198

14

[51 FR 41966, Nov. 20, 1986]

1453.303-70 Sample subcontracting plan outline format.

SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN OUTLINE FORMAT

Date:
Contractor:
Address:
Solicitation or Contract Number:
Item/Service:

The following, together with any attachments, is hereby submitted as a Subcontracting Plan to satisfy the applicable requirements of Pub. L. 95-507.

1. (a) The following goals will be applicable to any contract awarded as a result of this solicitation.

(i) Total dollars planned to be subcontracted to both large and small business under this contract $_______.

Goals	*Percent*	*Dollars*
(ii) Small Business [1]	______	______
(iii) Small Disadv. Business [2]	______	______

[1] Small business (SB): Percent of total planned subcontracting dollars (i) under this contract which will go to subcontractors which are small business concerns. Total dollars planned to be subcontracted to small business.

[2] Small and disadvantaged business (SADB): Percent of total planned subcontracting dollars (i) under this contract which will go to subcontractors which are small business concerns owned and controlled by socially and economically disadvantaged individuals. Total dollars planned to be subcontracted to small disadvantaged businesses.

(b) The principal products and services that (name of bidder/offeror) anticipates to be subcontracted under this contract and the identification of the type of business concern planned to be utilized are as follows:

List products and services	Type of business to be utilized (check block)	
	Small bus.	Small disadv. bus.
....	( )	( )
....	( )	( )
....	( )	( )
....	( )	( )

(c) The following method was used in developing subcontract goals (e.g., what source lists were used and what organizations were or will be contacted to obtain SB of SDB sources)

(d) Indirect and overhead costs (check one): ( ) have been ( ) have not been included in the goals specified in 1(a)(ii) and 1(a)(iii).

If "have been" is checked, explain the method used in determining the proportionate share of indirect and overhead costs to be incurred with small business and small disadvantaged business subcontractors. If "have not been" is checked, explain why products or services included in the overhead and indirect cost base cannot be subcontracted to small business or small disadvantaged business.

2. The following individual will administer the subcontracting program:

Name:
Title:
Address:
Telephone:

This individual's specific duties, as they relate to the firm's subcontracting program, are as follows: General overall responsibility for review, monitoring and execution of the plan including but not limited to:

(a) Obtaining small and small disadvantaged business sources from all applicable agencies such as SBA and MBDA.

(b) Assuring inclusion of SB and SADB firms in all solicitations where appropriate.

(c) Attending or arranging for attendance at Business Opportunity Workshops, Minority Business Enterprise Seminars, Trade Fairs, etc.

(d) Conducting or arranging for the conduct of motivational training for purchasing personnel pursuant to the intent of Pub. L. 95-507.

(e) Monitoring attainment of proposed goals.

(f) Reviewing solicitations to delete statements, clauses, and other provisions which may tend to prohibit SB and SDB participation.

3. The bidder (offeror) agrees to initiate the following actions to assure that small and small disadvantaged business concerns will have an equitable opportunity to compete for subcontracts:

(a) Outreach efforts shall be established as follows:

(i) Contacts with minority and small business trade associations. Name at least three (3).

(ii) Contacts with business development organizations. Name at least two (2).

(iii) Attendance at small and minority business procurement conferences and trade fairs. Provide examples.

(b) The following internal efforts shall be conducted so as to guide and encourage buyers:

(i) Periodic workshops, seminars, and training programs.

(ii) Activities shall be monitored so as to evaluate compliance with this subcontracting plan.

(c) Small and disadvantaged business source lists, guides, and other relevant data identifying small and disadvantaged business vendors shall be maintained and utilized by the buyer in soliciting subcontracts.

(d) Additions to (or deletions from) the above listed efforts are as follows:

4. The bidder (offeror) agrees that the clause entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns" will be included in all subcontracts which offer further subcontracting opportunities, and all subcontractors, except small business concerns, which receive subcontracts in excess of $500,000 or in the case of a contract for the construction of any public facility, $1,000,000, will be required to adopt and comply with a subcontracting plan similar to this one. Such plans will be reviewed by comparing them with the provisions of Pub. L. 95-507, and assuring that all minimum requirements of an acceptable subcontracting plan shall be determined on a case-by-case basis depending on the supplies/services involved, the availability of potential small and disadvantaged subcontractors, and prior experience. Once approved and implemented, plans will be monitored through the submission of periodic reports, and/or, as time and availability of funds permit, periodic visits to the subcontractor facilities or reviews of applicable records and subcontracting program progress.

5. The bidder (offeror) agrees to cooperate in any studies or surveys as may be required by the contracting agency or the Small Business Administration in order to determine the extent of compliance by the bidder (offeror) with the subcontracting plan. Additionally, the bidder (offeror) agrees to assure that its subcontractors agree to submit Standard Forms 294 and 295.

6. The bidder (offeror) agrees to maintain at least the following types of records to document compliance with this subcontracting plan:

(a) Small and disadvantaged business source lists, guides and other data identifying SB and SADB vendors.

(b) Organizations contacted for small and disadvantaged business sources.

(c) On a contract-by-contract basis, records on all subcontract solicitations over $100,000, indicating on each solicitation (1) whether small businesses were solicited, and if not, why not; (2) whether small disadvantaged businesses were solicited, and if not, why not; and (3) reasons for the failure of solicited small businesses or small disadvantaged businesses to receive the subcontract award.

(d) Records to support other outreach efforts: Contacts with Minority and Small Business Trade Associations, Business Development Organizations, and attendance at small and minority business procurement conferences and trade fairs.

(e) Records to support internal activities to guide and encourage buyers: Workshops, seminars, training programs, and monitoring activities to evaluate compliance.

(f) On a contract-by-contract basis, records to support award data submitted to the Government to include name and address of subcontractor.

7. The bidder (offeror) agrees to:

(a) Assist small and small disadvantaged business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the bidder's (offeror's) lists of potential small business and small disadvantaged subcontractors are excessively long, reasonable effort shall be made to give all such concerns an opportunity to compete over a period of time.

(b) Provide adequate and timely consideration of the potentialities of small and small disadvantaged business concerns in all "make-or-buy" decisions.

(c) Counsel and discuss subcontracting opportunities with representatives of small and small disadvantaged business firms.

Signed:
Typed Name:
Title:
Date:

[51 FR 41968, Nov. 20, 1986]

1453.303-71 Format for review of contractor's subcontracting program.

FORMAT FOR REVIEW OF CONTRACTOR'S SUBCONTRACTING PROGRAM

Part I—General Information

1. Contractor's name and address (include zip code).

2. Contractor's subcontracting plan administrator (Small Business Liaison Officer—SBLO).

3. Business Utilization and Development Specialist (BUDS).

4. Contracting Officer (CO) or Administrative Contracting Officer (ACO).

5. Small Business Administration Subcontracting Specialist.

6. Date of (a) Last review; (b) This review.

7. Period covered by this review (a) From; (b) To.

8. Total active DOI contracts (a) Number, (b) Face Value.

9. Total subcontracting potential estimated to be: (a) Substantial (over 50%); (b)

Moderate (30-50%); (c) Minimal (less than 30%); (d) Unknown.

10. Active contracts over $500,000 ($1 million if construction) that do not contain approved plans. (a) Number; (b) Face value (Identify and explain rationale for absence of plan.)

11. Active Contracts with Individual Subcontracting Plans. (a) Number; (b) Face value.

Part II—Contractor's Overall Performance Under Individual Subcontracting Plans

(Explain any negative findings, using Part III if additional space is required. Identify any exceptions that do not apply to all contracts detailed in Part I. This Part is to be reviewed in depth at least annually, and updated as required during interim reviews.)

1. Has a company wide policy statement been issued? Yes/No. If yes, by whom and date? How was it promulgated throughout the company?

2. Is the SBLO identified in Part I above responsible for all individual subcontracting plans detailed in Part I? Yes/No. Does the SBLO have adequate authority and responsibility to administer programs effectively? Yes/No. To whom does SBLO report?

3. Is there also a corporate SBLO? Yes/No. If yes, describe relationship between this division and the corporate SBLO.

4. Does contractor have an effective training program, particularly for buyers? Yes/No. Describe any incentive programs established for buyers or technicians to assist small and disadvantaged business (SADB) firms.

5. Does the contractor arrange solicitations, provide adequate bid preparation time, and adjust quantities, delivery schedules and specifications to enhance participation of SADB firms in the bidding process? Yes/No.

6. Does the contractor provide counseling assistance to SADB firms referred to it by the BUDS and by the SBA representative? Yes/No. Is such counseling effective? Yes/No.

7. Does the contractor provide technical, financial or other assistance to SADB firms? Yes/No. If yes, describe.

8. Does contractor counsel SADB firms as to why they may have failed to receive an award? Yes/No.

9. Does the contractor use DOI, SBA and other source lists to increase bidding opportunities? Yes/No. If yes, are listings being used effectively? Yes/No.

10. Does the contractor describe the method used in establishing individual contract goals? Yes/No. Is the method satisfactory? Yes/No. Is it detailed in the master plan? Yes/No. Is it detailed in subcontracting plans? Yes/No.

11. Are overhead items included in individual contract goals? Yes/No. If yes, does the contractor have a written procedure as to how these goals are to be allocated to individual contracts? Yes/No.

12. Does the contractor submit SF 294's and SF 295's in a timely manner? Yes/No. Are they accurate? Yes/No.

13. Describe the method used by BUDS in verifying accuracy of data reported on SF 294 and SF 295.

14. Does SF 295 contain allocable portions of overhead items as well as performance on individual contracts that do not require plans? Yes/No.

15. Describe methods used by contractor to monitor performance in meeting goals, including feedback mechanisms.

16. Are there written procedures to implement the program. Yes/ No. If yes, are they adequate to assure effective performance? Yes/No.

17. Is the contractor making satisfactory progress towards meeting all individual plan subcontracting goals? Yes/No. If no, explain in detail.

18. Check the appropriate box to indicate the records maintained by contractor.

( ) Small and disadvantaged business source lists, guides and other data identifying SADB vendors.

( ) Organizations contacted for small and disadvantaged business sources.

( ) Subcontract solicitations over $100,000, indicating on each solicitation:

(1) Whether small business was solicited, and if not why not.

(2) Whether small disadvantaged business was solicited, and if not why not.

(3) The reasons for the failure of solicited small businesses or small disadvantaged businesses to receive the subcontract award.

( ) Outreach Efforts:

(1) Contacts with Minority and Small Business Trade Associations, etc.

(2) Contacts with business development organizations, etc.

(3) Attendance at small and minority business procurement conferences and trade fairs.

( ) Internal activities to guide and encourage buyers: (1) Workshops; (2) Seminars; (3) Training programs; (4) Monitoring activities to evaluate compliance.

( ) Award data to include name and address of subcontractor.

( ) Certifications from small, small disadvantaged, women-owned, and labor surplus area business concerns.

19. Does the contractor use flow-down subcontracting plan clauses as required by its prime contract clauses? Yes/No. If yes, does the contractor obtain and review subcontractor plans to assure that a subcontractor's plan is in consonance with its own plan? Yes/No.

20. Does the contractor monitor subcontractor's performance against plan? Yes/No. If yes, how?

21. Do any of the individual subcontracting plans contain special features such as an incentive clause to which the above questions do not particularly apply? Yes/No. If yes, describe the special features and contractor's performance in detail.

22. Does the contractor have an acceptable Labor Surplus Area program, including records and reports? Yes/No.

23. Does the contractor recognize its obligation to use its best efforts in awarding subcontracts to women-owned business concerns, as required by FAR 52.219-13? Yes/No.

Part III—Remarks

(Cross reference all remarks to appropriate section in this report)

Part IV—Summary and Recommendation

1. Exit interview conducted with the following contractor representatives: ______, on (date).

2. SBA representative did/did not participate in this review.

3. Contractor's performance in complying with subcontracting program and individual subcontracting plan requirements is: Outstanding; Acceptable; Marginal; Unsatisfactory.

(a) If performance is outstanding or acceptable, summarize basis for this rating;

(b) If performance is marginal or unsatisfactory, detail reason as appropriate and:

(i) Summarize program or plan deficiencies.

(ii) Identify recommendations made to the contractor to correct deficiencies.

[51 FR 41969, Nov. 20, 1986]

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

Table of CFR Titles and Chapters
Alphabetical List of Agencies Appearing in the CFR
Distribution Table
List of CFR Sections Affected

Table of CFR Titles and Chapters

(Revised as of September 14, 1990)

Title 1—General Provisions

I	Administrative Committee of the Federal Register (Parts 1—49)
II	Office of the Federal Register (Parts 50—299)
III	Administrative Conference of the United States (Parts 300—399)
IV	Miscellaneous Agencies (Parts 400—500)

Title 2—[Reserved]

Title 3—The President

I	Executive Office of the President (Parts 100—199)

Title 4—Accounts

I	General Accounting Office (Parts 1—99)
II	Federal Claims Collection Standards (General Accounting Office—Department of Justice) (Parts 100—299)
III	General Accounting Office (CASB) (Parts 300—499)

Title 5—Administrative Personnel

I	Office of Personnel Management (Parts 1—1199)
II	Merit Systems Protection Board (Parts 1200—1299)
III	Office of Management and Budget (Parts 1300—1399)
IV	Advisory Committee on Federal Pay (Parts 1400—1499)
V	The International Organizations Employees Loyalty Board (Parts 1500—1599)
VI	Federal Retirement Thrift Investment Board (Parts 1600—1699)
VII	Advisory Commission on Intergovernmental Relations (Parts 1700—1799)
VIII	Office of Special Council (Parts 1800—1899)
IX	Appalachian Regional Commission (Parts 1900—1999)
XI	United States Soldiers' and Airmen's Home (Parts 2100—2199)
XIV	Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400—2499)

best copy available

pages tightly bound

Title 5—Administrative Personnel—Continued

Chap.	
XV	Office of Administration, Executive Office of the President (Parts 2500—2599)
XVI	Office of Government Ethics (Parts 2600—2699)

Title 6—[Reserved]

Title 7—Agriculture

	Subtitle A—Office of the Secretary of Agriculture (Parts 0–26)
	Subtitle B—Regulations of the Department of Agriculture
I	Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)
II	Food and Nutrition Service, Department of Agriculture (Parts 210—299)
III	Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)
IV	Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)
V	Agricultural Research Service, Department of Agriculture (Parts 500—599)
VI	Soil Conservation Service, Department of Agriculture (Parts 600—699)
VII	Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture (Parts 700–799)
VIII	Federal Grain Inspection Service, Department of Agriculture (Parts 800—899)
IX	Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)
X	Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)
XI	Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)
XIV	Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)
XV	Foreign Agricultural Service, Department of Agriculture (Parts 1500—1599)
XVI	Rural Telephone Bank, Department of Agriculture (Parts 1600—1699)
XVII	Rural Electrification Administration, Department of Agriculture (Parts 1700—1799)
XVIII	Farmers Home Administration, Department of Agriculture (Parts 1800—2099)
XXI	Foreign Economic Development Service, Department of Agriculture (Parts 2100—2199)
XXII	Office of International Cooperation and Development, Department of Agriculture (Parts 2200—2299)

Title 7—Agriculture—Continued

Chap.	
XXIV	Board of Contract Appeals, Department of Agriculture (Parts 2400—2499)
XXV	Office of the General Sales Manager, Department of Agriculture (Parts 2500—2599)
XXVI	Office of Inspector General, Department of Agriculture (Parts 2600—2699)
XXVII	Office of Information Resources Management, Department of Agriculture (Parts 2700—2799)
XXVIII	Office of Operations, Department of Agriculture (Parts 2800—2899)
XXIX	Office of Energy, Department of Agriculture (Parts 2900—2999)
XXX	Office of Finance and Management, Department of Agriculture (Parts 3000—3099)
XXXI	Office of Environmental Quality, Department of Agriculture (Parts 3100—3199)
XXXII	Office of Grants and Program Systems, Department of Agriculture (Parts 3200—3299)
XXXIII	Office of Transportation, Department of Agriculture (Parts 3300—3399)
XXXIV	Cooperative State Research Service, Department of Agriculture (Parts 3400—3499)
XXXVI	National Agricultural Statistics Service, Department of Agriculture (Parts 3600—3699)
XXXVII	Economic Research Service, Department of Agriculture (Parts 3700—3799)
XXXVIII	World Agricultural Outlook Board, Department of Agriculture (Parts 3800—3899)
XXXIX	Economic Analysis Staff, Department of Agriculture (Parts 3900—3999)
XL	Economics Management Staff, Department of Agriculture (Parts 4000—4099)
XLI	National Agricultural Library, Department of Agriculture (Part 4100)

Title 8—Aliens and Nationality

I	Immigration and Naturalization Service, Department of Justice (Parts 1—499)

Title 9—Animals and Animal Products

I	Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1—199)
II	Packers and Stockyards Administration, Department of Agriculture (Parts 200—299)
III	Food Safety and Inspection Service, Meat and Poultry Inspection, Department of Agriculture (Parts 300—399)

Title 10—Energy

Chap.	
I	Nuclear Regulatory Commission (Parts 0—199)
II	Department of Energy (Parts 200—699)
III	Department of Energy (Parts 700—999)
X	Department of Energy (General Provisions) (Parts 1000—1099)
XV	Office of the Federal Inspector for the Alaska Natural Gas Transportation System (Parts 1500—1599)

Title 11—Federal Elections

I	Federal Election Commission (Parts 1—9099)

Title 12—Banks and Banking

I	Comptroller of the Currency, Department of the Treasury (Parts 1--199)
II	Federal Reserve System (Parts 200—299)
III	Federal Deposit Insurance Corporation (Parts 300—399)
IV	Export-Import Bank of the United States (Parts 400—499)
V	Office of Thrift Supervision, Department of the Treasury (Parts 500—599)
VI	Farm Credit Administration (Parts 600—699)
VII	National Credit Union Administration (Parts 700—799)
VIII	Federal Financing Bank (Parts 800—899)
IX	Federal Housing Finance Board (Parts 900—999)
XI	Federal Financial Institutions Examination Council (Parts 1100—1199)
XIII	Farm Credit System Assistance Board (Parts 1300—1399)
XIV	Farm Credit System Insurance Corporation
XV	Oversight Board (Parts 1500—1599)
XVI	Resolution Trust Corporation (Parts 1600—1699)

Title 13—Business Credit and Assistance

I	Small Business Administration (Parts 1—199)
III	Economic Development Administration, Department of Commerce (Parts 300—399)

Title 14—Aeronautics and Space

I	Federal Aviation Administration, Department of Transportation (Parts 1—199)
II	Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200—399)
III	Office of Commercial Space Transportation, Department of Transportation (Parts 400—499)
V	National Aeronautics and Space Administration (Parts 1200—1299)

Title 15—Commerce and Foreign Trade

Chap.	
	SUBTITLE A—Office of the Secretary of Commerce (Parts 0—29)
	SUBTITLE B—Regulations Relating to Commerce and Foreign Trade
I	Bureau of the Census, Department of Commerce (Parts 30—199)
II	National Institute of Standards and Technology, Department of Commerce (Parts 200—299)
III	International Trade Administration, Department of Commerce (Parts 300—399)
IV	Foreign-Trade Zones Board (Parts 400—499)
VII	Bureau of Export Administration, Department of Commerce (Parts 700—799)
VIII	Bureau of Economic Analysis, Department of Commerce (Parts 800—899)
IX	National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900—999)
XI	Technology Administration, Department of Commerce (Parts 1100—1199)
XII	United States Travel Service, Department of Commerce (Parts 1200—1299)
XIII	East-West Foreign Trade Board (Parts 1300—1399)
XIV	Minority Business Development Agency (Parts 1400—1499)
	SUBTITLE C—Regulations Relating to Foreign Trade Agreements
XX	Office of the United States Trade Representative (Parts 2000—2099)
	SUBTITLE D—Regulations Relating to Telecommunications and Information
XXIII	National Telecommunications and Information Administration, Department of Commerce (Parts 2300—2399)

Title 16—Commercial Practices

I	Federal Trade Commission (Parts 0—999)
II	Consumer Product Safety Commission (Parts 1000—1799)

Title 17—Commodity and Securities Exchanges

I	Commodity Futures Trading Commission (Parts 1—199)
II	Securities and Exchange Commission (Parts 200—399)
IV	Department of the Treasury (Parts 400—499)

Title 18—Conservation of Power and Water Resources

I	Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)
III	Delaware River Basin Commission (Parts 400—499)
VI	Water Resources Council (Parts 700—799)
VIII	Susquehanna River Basin Commission (Parts 800—899)

Title 18—Conservation of Power and Water Resources—Continued

Chap.	
XIII	Tennessee Valley Authority (Parts 1300—1399)

Title 19—Customs Duties

I	United States Customs Service, Department of the Treasury (Parts 1—199)
II	United States International Trade Commission (Parts 200—299)
III	International Trade Administration, Department of Commerce (Parts 300—399)

Title 20—Employees' Benefits

I	Office of Workers' Compensation Programs, Department of Labor (Parts 1—199)
II	Railroad Retirement Board (Parts 200—399)
III	Social Security Administration, Department of Health and Human Services (Parts 400—499)
IV	Employees' Compensation Appeals Board, Department of Labor (Parts 500—599)
V	Employment and Training Administration, Department of Labor (Parts 600—699)
VI	Employment Standards Administration, Department of Labor (Parts 700—799)
VII	Benefits Review Board, Department of Labor (Parts 800—899)
VIII	Joint Board for the Enrollment of Actuaries (Parts 900—999)
IX	Office of the Assistant Secretary for Veterans' Employment and Training, Department of Labor (Parts 1000—1099)

Title 21—Food and Drugs

I	Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)
II	Drug Enforcement Administration, Department of Justice (Parts 1300—1399)

Title 22—Foreign Relations

I	Department of State (Parts 1—199)
II	Agency for International Development, International Development Cooperation Agency (Parts 200—299)
III	Peace Corps (Parts 300—399)
IV	International Joint Commission, United States and Canada (Parts 400—499)
V	United States Information Agency (Parts 500—599)
VI	United States Arms Control and Disarmament Agency (Parts 600—699)
VII	Overseas Private Investment Corporation, International Development Cooperation Agency (Parts 700—799)
IX	Foreign Service Grievance Board Regulations (Parts 900—999)
X	Inter-American Foundation (Parts 1000—1099)

Title 22—Foreign Relations—Continued

Chap.	
XI	International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100—1199)
XII	United States International Development Cooperation Agency (Parts 1200—1299)
XIII	Board for International Broadcasting (Parts 1300—1399)
XIV	Foreign Service Labor Relations Board; Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel (Parts 1400—1499)
XV	African Development Foundation (Parts 1500—1599)
XVI	Japan-United States Friendship Commission (Parts 1600—1699)

Title 23—Highways

I	Federal Highway Administration, Department of Transportation (Parts 1—999)
II	National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200—1299)
III	National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

Title 24—Housing and Urban Development

Subtitle A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)

Subtitle B—Regulations Relating to Housing and Urban Development

I	Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)
II	Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)
III	Government National Mortgage Association, Department of Housing and Urban Development (Parts 300—399)
V	Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)
VI	Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600—699)
VII	Office of the Secretary, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700—799)
VIII	Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Section 202 Direct Loan Program) (Parts 800—899)
IX	Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—999)

Title 24—Housing and Urban Development—Continued

Chap.	
X	Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Interstate Land Sales Registration Program) (Parts 1700—1799)
XI	Solar Energy and Energy Conservation Bank, Department of Housing and Urban Development (Parts 1800—1899)
XII	Office of Inspector General, Department of Housing and Urban Development (Parts 2000—2099)
XV	Mortgage Insurance and Loan Programs under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development (Parts 2700—2799)
XX	Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3699)
XXV	Neighborhood Reinvestment Corporation (Parts 4100—4199)

Title 25—Indians

I	Bureau of Indian Affairs, Department of the Interior (Parts 1—299)
II	Indian Arts and Crafts Board, Department of the Interior (Parts 300—399)
IV	Navajo and Hopi Indian Relocation Commission (Parts 700—799)

Title 26—Internal Revenue

I	Internal Revenue Service, Department of the Treasury (Parts 1—699)

Title 27—Alcohol, Tobacco Products and Firearms

I	Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1—299)

Title 28—Judicial Administration

I	Department of Justice (Parts 0—199)
III	Federal Prison Industries, Inc., Department of Justice (Parts 300—399)
V	Bureau of Prisons, Department of Justice (Parts 500—599)
VI	Offices of Independent Counsel, Department of Justice (Parts 600—699)
VII	Office of Independent Counsel (Parts 700—799)

Title 29—Labor

	SUBTITLE A—Office of the Secretary of Labor (Parts 0—99)
	SUBTITLE B—Regulations Relating to Labor
I	National Labor Relations Board (Parts 100—199)

Title 29—Labor—Continued

Chap.	
II	Bureau of Labor-Management Relations and Cooperative Programs, Department of Labor (Parts 200—299)
III	National Railroad Adjustment Board (Parts 300—399)
IV	Office of Labor-Management Standards, Department of Labor (Parts 400—499)
V	Wage and Hour Division, Department of Labor (Parts 500—899)
IX	Construction Industry Collective Bargaining Commission (Parts 900—999)
X	National Mediation Board (Parts 1200-1299)
XII	Federal Mediation and Conciliation Service (Parts 1400-1499)
XIV	Equal Employment Opportunity Commission (Parts 1600-1699)
XVII	Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)
XX	Occupational Safety and Health Review Commission (Parts 2200—2499)
XXV	Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)
XXVI	Pension Benefit Guaranty Corporation (Parts 2600—2699)
XXVII	Federal Mine Safety and Health Review Commission (Parts 2700—2799)

Title 30—Mineral Resources

I	Mine Safety and Health Administration, Department of Labor (Parts 1—199)
II	Minerals Management Service, Department of the Interior (Parts 200—299)
III	Board of Surface Mining and Reclamation Appeals, Department of the Interior (Parts 300—399)
IV	Geological Survey, Department of the Interior (Parts 400—499)
VI	Bureau of Mines, Department of the Interior (Parts 600—699)
VII	Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

Title 31—Money and Finance: Treasury

	SUBTITLE A—Office of the Secretary of the Treasury (Parts 0—50)
	SUBTITLE B—Regulations Relating to Money and Finance
I	Monetary Offices, Department of the Treasury (Parts 51—199)
II	Fiscal Service, Department of the Treasury (Parts 200—399)
IV	Secret Service, Department of the Treasury (Parts 400—499)
V	Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)
VI	Bureau of Engraving and Printing, Department of the Treasury (Parts 600—699)
VII	Federal Law Enforcement Training Center, Department of the Treasury (Parts 700—799)

Title 32—National Defense

Chap.	
	SUBTITLE A—Department of Defense
I	Office of the Secretary of Defense (Parts 1—399)
V	Department of the Army (Parts 400—699)
VI	Department of the Navy (Parts 700—799)
VII	Department of the Air Force (Parts 800—1099)
	SUBTITLE B—Other Regulations Relating to National Defense
XII	Defense Logistics Agency (Parts 1200-1299)
XVI	Selective Service System (Parts 1600-1699)
XIX	Central Intelligence Agency (Parts 1900—1999)
XX	Information Security Oversight Office (Parts 2000—2099)
XXI	National Security Council (Parts 2100—2199)
XXIV	Office of Science and Technology Policy (Parts 2400—2499)
XXVII	Office for Micronesian Status Negotiations (Parts 2700—2799)
XXVIII	Office of the Vice President of the United States (Parts 2800–2899)

Title 33—Navigation and Navigable Waters

I	Coast Guard, Department oi Transportation (Parts 1—199)
II	Corps of Engineers, Department of the Army (Parts 200—399)
IV	Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400—499)

Title 34—Education

	SUBTITLE A—Office of the Secretary, Department of Education (Parts 1—99)
	SUBTITLE B—Regulations of the Offices of the Department of Education
I	Office for Civil Rights, Department of Education (Parts 100–199)
II	Office of Elementary and Secondary Education, Department of Education (Parts 200—299)
III	Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)
IV	Office of Vocational and Adult Education, Department of Education (Parts 400—499)
V	Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500—599)
VI	Office of Postsecondary Education, Department of Education (Parts 600—699)
VII	Office of Educational Research and Improvement, Department of Education (Parts 700—799)

Title 35—Panama Canal

Chap.

I Panama Canal Regulations (Parts 1—299)

Title 36—Parks, Forests, and Public Property

I National Park Service, Department of the Interior (Parts 1—199)

II Forest Service, Department of Agriculture (Parts 200—299)

III Corps of Engineers, Department of the Army (Parts 300—399)

IV American Battle Monuments Commission (Parts 400—499)

V Smithsonian Institution (Parts 500—599)

VII Library of Congress (Parts 700—799)

VIII Advisory Council on Historic Preservation (Parts 800—899)

IX Pennsylvania Avenue Development Corporation (Parts 900-999)

XI Architectural and Transportation Barriers Compliance Board (Parts 1100—1199)

XII National Archives and Records Administration (Parts 1200—1299)

Title 37—Patents, Trademarks, and Copyrights

I Patent and Trademark Office, Department of Commerce (Parts 1—199)

II Copyright Office, Library of Congress (Parts 200—299)

III Copyright Royalty Tribunal (Parts 300—399)

IV Assistant Secretary for Productivity, Technology and Innovation, Department of Commerce (Parts 400-499)

V Under Secretary for Economic Affairs, Department of Commerce (500—599)

Title 38—Pensions, Bonuses, and Veterans' Relief

I Department of Veterans Affairs (Parts 0—99)

Title 39—Postal Service

I United States Postal Service (Parts 1—999)

III Postal Rate Commission (Parts 3000—3099)

Title 40—Protection of Environment

I Environmental Protection Agency (Parts 1—799)

V Council on Environmental Quality (Parts 1500-1599)

Title 41—Public Contracts and Property Management

SUBTITLE B—Other Provisions Relating to Public Contracts

50 Public Contracts, Department of Labor (Parts 50-1—50-999)

51 Committee for Purchase from the Blind and Other Severely Handicapped (Parts 51-1—51-99)

Title 41—Public Contracts and Property Management—Continued

Chap.	
60	Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60-1—60-999)
61	Office of the Assistant Secretary for Veterans Employment and Training, Department of Labor (Parts 61-1—61-999)
	SUBTITLE C—Federal Property Management Regulations System
101	Federal Property Management Regulations (Parts 101-1—101-99)
105	General Services Administration (Parts 105-1—105-999)
109	Department of Energy Property Management Regulations (Parts 109-1—109-99)
114	Department of the Interior (Parts 114-1—114-99)
115	Environmental Protection Agency (Parts 115-1—115-99)
128	Department of Justice (Parts 128-1—128-99)
	SUBTITLE D—Other Provisions Relating to Property Management (Reserved)
	SUBTITLE E—Federal Information Resources Management Regulations System
201	Federal Information Resources Management Regulation (Parts 201-1—201-99)
	SUBTITLE F—Federal Travel Regulation System
301	Travel Allowances (Parts 301-1—301-14)
302	Relocation Allowances (Parts 302-1—302-12)
303	Payment of Expenses Connected with the Death of Certain Employees (Parts 302-1—302-2)
304	Reductions in Meeting and Training Allowance Payments (Parts 304-1—304-2)

Title 42—Public Health

I	Public Health Service, Department of Health and Human Services (Parts 1—199)
IV	Health Care Financing Administration, Department of Health and Human Services (Parts 400—499)
V	Office of Inspector General-Health Care, Department of Health and Human Services (Parts 1000—1999)

Title 43—Public Lands: Interior

	SUBTITLE A—Office of the Secretary of the Interior (Parts 1—199)
	SUBTITLE B—Regulations Relating to Public Lands
I	Bureau of Reclamation, Department of the Interior (Parts 200—499)
II	Bureau of Land Management, Department of the Interior (Parts 1000—9999)

Title 44—Emergency Management and Assistance

Chap.	
I	Federal Emergency Management Agency (Parts 0—399)
IV	Department of Commerce and Department of Transportation (Parts 400—499)

Title 45—Public Welfare

	SUBTITLE A—Department of Health and Human Services, General Administration (Parts 1—199)
	SUBTITLE B—Regulations Relating to Public Welfare
II	Office of Family Assistance (Assistance Programs), Family Support Administration, Department of Health and Human Services (Parts 200—299)
III	Office of Child Support Enforcement (Child Support Enforcement Program), Family Support Administration, Department of Health and Human Services (Parts 300—399)
IV	Office of Refugee Resettlement, Family Support Administration, Department of Health and Human Services (Parts 400—499)
V	Foreign Claims Settlement Commission of the United States, Department of Justice (Parts 500—599)
VI	National Science Foundation (Parts 600—699)
VII	Commission on Civil Rights (Parts 700—799)
VIII	Office of Personnel Management (Parts 800—899)
X	Office of Community Services, Family Support Administration, Department of Health and Human Services (Parts 1000—1099)
XI	National Foundation on the Arts and the Humanities (Parts 1100—1199)
XII	ACTION (Parts 1200—1299)
XIII	Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)
XVI	Legal Services Corporation (Parts 1600—1699)
XVII	National Commission on Libraries and Information Science (Parts 1700—1799)
XVIII	Harry S. Truman Scholarship Foundation (Parts 1800—1899)
XX	Commission on the Bicentennial of the United States Constitution (Parts 2000—2099)
XXI	Commission on Fine Arts (Parts 2100—2199)
XXII	Christopher Columbus Quincentenary Jubilee Commission (2200—2299)

Title 46—Shipping

I	Coast Guard, Department of Transportation (Parts 1—199)
II	Maritime Administration, Department of Transportation (Parts 200—399)
III	Coast Guard (Great Lakes Pilotage), Department of Transportation (Parts 400—499)
IV	Federal Maritime Commission (Parts 500—599)

Title 47—Telecommunication

Chap.	
I	Federal Communications Commission (Parts 0—199)
II	Office of Science and Technology Policy and National Security Council (Parts 200—299)
III	National Telecommunications and Information Administration, Department of Commerce (Parts 300—399)

Title 48—Federal Acquisition Regulations System

1	Federal Acquisition Regulation (Parts 1—99)
2	Department of Defense (Parts 200—299)
3	Department of Health and Human Services (Parts 300—399)
4	Department of Agriculture (Parts 400—499)
5	General Services Administration (Parts 500—599)
6	Department of State (Parts 600—699)
7	Agency for International Development (Parts 700—799)
8	Department of Veterans Affairs (Parts 800—899)
9	Department of Energy (Parts 900—999)
10	Department of the Treasury (Parts 1000—1099)
12	Department of Transportation (Parts 1200—1299)
13	Department of Commerce (Parts 1300—1399)
14	Department of the Interior (Parts 1400—1499)
15	Environmental Protection Agency (Parts 1500—1599)
16	Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation (Parts 1600—1699)
17	Office of Personnel Management (Parts 1700—1799)
18	National Aeronautics and Space Administration (Parts 1800—1899)
19	United States Information Agency (Parts 1900—1999)
22	Small Business Administration (Parts 2200—2299)
24	Department of Housing and Urban Development (Parts 2400—2499)
25	National Science Foundation (Parts 2500—2599)
28	Department of Justice (Parts 2800—2899)
29	Department of Labor (Parts 2900—2999)
34	Department of Education Acquisition Regulation (Parts 3400—3499)
35	Panama Canal Commission (Parts 3500—3599)
44	Federal Emergency Management Agency (Parts 4400—4499)
51	Department of the Army Acquisition Regulations (Parts 5100—5199)
52	Department of the Navy Acquisition Regulations (Parts 5200—5299)
53	Department of the Air Force Federal Acquisition Regulation Supplement (Parts 5300—5399)
57	African Development Foundation (Parts 5700—5799)
61	General Services Administration Board of Contract Appeals (Parts 6100—6199)

Title 48—Federal Acquisition Regulations System—Continued

Chap.	
63	Department of Transportation Board of Contract Appeals (Parts 6300-6399)

Title 49—Transportation

	SUBTITLE A—Office of the Secretary of Transportation (Parts 1—99)
	SUBTITLE B—Other Regulations Relating to Transportation
I	Research and Special Programs Administration, Department of Transportation (Parts 100—199)
II	Federal Railroad Administration, Department of Transportation (Parts 200—299)
III	Federal Highway Administration, Department of Transportation (Parts 300—399)
IV	Coast Guard, Department of Transportation (Parts 400—499)
V	National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)
VI	Urban Mass Transportation Administration, Department of Transportation (Parts 600—699)
VII	National Railroad Passenger Corporation (AMTRAK) (Parts 700—799)
VIII	National Transportation Safety Board (Parts 800—899)
X	Interstate Commerce Commission (Parts 1000—1399)

Title 50—Wildlife and Fisheries

I	United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)
II	National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)
III	International Regulatory Agencies (Fishing and Whaling) (Parts 300—399)
IV	Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations (Parts 400—499)
V	Marine Mammal Commission (Parts 500—599)
VI	Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)

CFR Index and Finding Aids

Subject/Agency Index
List of Agency Prepared Indexes
Parallel Tables of Statutory Authorities and Rules
Acts Requiring Publication in the Federal Register
List of CFR Titles, Chapters, Subchapters, and Parts

Alphabetical List of Agencies Appearing in the CFR

(Revised as of September 14, 1990)

Agency	CFR Title, Subtitle or Chapter
ACTION	45, XII
Administrative Committee of the Federal Register	1, I
Administrative Conference of the United States	1, III
Advisory Commission on Intergovernmental Relations	5, VII
Advisory Committee on Federal Pay	5, IV
Advisory Council on Historic Preservation	36, VIII
African Development Foundation	22, XV; 48, 57
Agency for International Development	22, II; 48, 7
Agricultural Marketing Service	7, I, IX, X, XI
Agricultural Research Service	7, V
Agricultural Stabilization and Conservation Service	7, VII
Agriculture Department	
Agricultural Marketing Service	7, I, IX, X, XI
Agricultural Research Service	7, V
Agricultural Stabilization and Conservation Service	7, VII
Animal and Plant Health Inspection Service	7, III; 9, I
Commodity Credit Corporation	7, XIV
Contract Appeals, Board of	7, XXIV
Cooperative State Research Service	7, XXXIV
Economic Analysis Staff	7, XXXIX
Economics Management Staff	7, XL
Economic Research Service	7, XXXVII
Energy, Office of	7, XXIX
Environmental Quality, Office of	7, XXXI
Farmers Home Administration	7, XVIII
Federal Acquisition Regulation	48, 4
Federal Crop Insurance Corporation	7, IV
Federal Grain Inspection Service	7, VIII
Finance and Management, Office of	7, XXX
Food and Nutrition Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Foreign Economic Development Service	7, XXI
Forest Service	36, II
General Sales Manager, Office of	7, XXV
Grants and Program Systems, Office of	7, XXXII
Information Resources Management, Office of	7, XXVII
Inspector General, Office of	7, XXVI
International Cooperation and Development Office	7, XXII
National Agricultural Library	7, XLI
National Agricultural Statistics Service	7, XXXVI
Operations Office	7, XXVIII
Packers and Stockyards Administration	9, II
Rural Electrification Administration	7, XVII
Rural Telephone Bank	7, XVI
Secretary of Agriculture, Office of	7, Subtitle A
Soil Conservation Service	7, VI
Transportation, Office of	7, XXXIII
World Agriculture Outlook Board	7, XXXVIII
Air Force Department	32, VII
Federal Acquisition Regulation Supplement	48, 53

Agency	CFR Title, Subtitle or Chapter
Alaska Natural Gas Transportation System, Office of the Federal Inspector	10, XV
Alcohol, Tobacco and Firearms, Bureau of	27, I
AMTRAK	49, VII
American Battle Monuments Commission	36, IV
Animal and Plant Health Inspection Service	7, III; 9, I
Appalachian Regional Commission	5, IX
Architectural and Transportation Barriers Compliance Board	36, XI
Arms Control and Disarmament Agency, U.S.	22, VI
Army Department	32, V
Engineers, Corps of	33, II; 36, III
Federal Acquisition Regulation	48, 51
Benefits Review Board	20, VII
Bicentennial of the United States Constitution, Commission on the	45, XX
Bilingual Education and Minority Languages Affairs, Office of	34, V
Blind and Other Severely Handicapped, Committee for Purchase from	41, 51
Board for International Broadcasting	22, XIII
Budget, Office of Management and	5, III
Census Bureau	15, I
Central Intelligence Agency	32, XIX
Child Support Enforcement, Office of	45, III
Christopher Columbus Quincentenary Jubilee Commission	45, XXII
Civil Rights Commission	45, VII
Civil Rights, Office for (Education Department)	34, I
Claims Collection Standards, Federal	4, II
Coast Guard	33, I; 46, I, III; 49, IV
Commerce Department	44, IV
Census Bureau	15, I
Economic Affairs, Under Secretary	37, V
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Endangered Species Committee	50, IV
Export Administration Bureau	15, VII
Federal Acquisition Regulation	48, 13
Fishery Conservation and Management	50, VI
International Trade Administration	15, III; 19, III
National Institute of Standards and Technology	15, II
National Marine Fisheries Service	50, II, IV
National Oceanic and Atmospheric Administration	15, IX; 50, II, III, IV, VI
National Telecommunications and Information Administration	15, XXIII; 47, III
Patent and Trademark Office	37, I
Productivity, Technology and Innovation, Assistant Secretary for	37, IV
Secretary of Commerce, Office of	15, Subtitle A
Technology Administration	15, XI
United States Travel Service	15, XII
Commercial Space Transportation, Office of, Department of Transportation	14, III
Commission on the Bicentennial of the United States Constitution	45, XX
Committee for Purchase from the Blind and Other Severely Handicapped	41, 51
Commodity Credit Corporation	7, XIV
Commodity Futures Trading Commission	17, I
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Community Services, Office of	45, X
Comptroller of the Currency	12, I
Construction Industry Collective Bargaining Commission	29, IX
Consumer Product Safety Commission	16, II

Agency	CFR Title, Subtitle or Chapter
Contract Appeals, Board of	7, XXIV
Cooperative State Research Service	7, XXXIV
Copyright Office	37, II
Copyright Royalty Tribunal	37, III
Council on Environmental Quality	40, V
Customs Service, United States	19, I
Defense Department	32, Subtitle A
Air Force Department	32, VII
Army Department	32, V; 33, II; 36, III, 48, 51
Engineers, Corps of	33, II; 36, III
Federal Acquisition Regulation	48, 2
Navy Department	32, VI; 48, 52
Secretary of Defense, Office of	32, I
Defense Logistics Agency	32, XII
Delaware River Basin Commission	18, III
Drug Enforcement Administration	21, II
East-West Foreign Trade Board	15, XIII
Economic Affairs, Under Secretary (Commerce)	37, V
Economic Analysis, Bureau of	15, VIII
Economic Analysis Staff, Department of Agriculture	7, XXXIX
Economic Development Administration	13, III
Economics Management Staff	7, XL
Economic Research Service	7, XXXVII
Education, Department of	
Bilingual Education and Minority Languages Affairs, Office of	34, V
Civil Rights, Office for	34, I
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Federal Acquisition Regulation	48, 34
Postsecondary Education, Office of	34, VI
Secretary of Education, Office of	34, Subtitle A
Special Education and Rehabilitative Services, Office of	34, III
Vocational and Adult Education, Office of	34, IV
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Employees' Compensation Appeals Board	20, IV
Employees Loyalty Board, International Organizations	5, V
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Endangered Species Committee	50, IV
Energy, Department of	10, II, III, X; 41, 109
Federal Acquisition Regulation	48, 9
Federal Energy Regulatory Commission	18, I
Energy, Office of, Department of Agriculture	7, XXIX
Engineers, Corps of	33, II; 36, III
Engraving and Printing, Bureau of	31, VI
Environmental Protection Agency	40, I; 41, 115; 48, 15
Environmental Quality, Office of (Agriculture Department)	7, XXXI
Equal Employment Opportunity Commission	29, XIV
Equal Opportunity, Office of Assistant Secretary for	24, I
Executive Office of the President	3, I
Administration, Office of	5, XV
Export Administration Bureau	15, VII
Export-Import Bank of the United States	12, IV
Family Assistance, Office of	45, II
Family Support Administration	45, II, III, IV, X
Farm Credit Administration	12, VI
Farm Credit System Assistance Board	12, XIII
Farm Credit System Insurance Corporation	12, XIV
Farmers Home Administration	7, XVIII
Federal Acquisition Regulation	48, 1
Federal Aviation Administration	14, I
Federal Claims Collection Standards	4, II
Federal Communications Commission	47, I

Agency	CFR Title, Subtitle or Chapter
Federal Contract Compliance Programs, Office of	41, 60
Federal Crop Insurance Corporation	7, IV
Federal Deposit Insurance Corporation	12, III
Federal Election Commission	11, I
Federal Emergency Management Agency	44, I; 48, 44
Federal Energy Regulatory Commission	18, I
Federal Financial Institutions Examination Council	12, XI
Federal Financing Bank	12, VIII
Federal Grain Inspection Service	7, VIII
Federal Highway Administration	23, I, II; 49, III
Federal Home Loan Mortgage Corporation	1, IV
Federal Housing Finance Board	12, IX
Federal Information Resources Management Regulations	41, Subtitle E, Ch. 201
Federal Inspector for the Alaska Natural Gas Transportation System, Office of	10, XV
Federal Labor Relations Authority, and General Counsel of the Federal Labor Relations Authority	5, XIV; 22, XIV
Federal Law Enforcement Training Center	31, VII
Federal Maritime Commission	46, IV
Federal Mediation and Conciliation Service	29, XII
Federal Mine Safety and Health Review Commission	29, XXVII
Federal Pay, Advisory Committee on	5, IV
Federal Prison Industries, Inc.	28, III
Federal Property Management Regulations	41, 101
Federal Property Management Regulations System	41, Subtitle C
Federal Railroad Administration	49, II
Federal Register, Administrative Committee of	1, I
Federal Register, Office of	1, II
Federal Reserve System	12, II
Federal Retirement Thrift Investment Board	5, VI
Federal Service Impasses Panel	5, XIV
Federal Trade Commission	16, I
Federal Travel Regulation System	41, Subtitle F
Finance and Management, Department of Agriculture	7, XXX
Fine Arts Commission	45, XXI
Fiscal Service	31, II
Fish and Wildlife Service, United States	50, I, IV
Fishery Conservation and Management	50, VI
Fishing and Whaling, International Regulatory Agencies	50, III
Food and Drug Administration	21, I
Food and Nutrition Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Foreign Assets Control, Office of	31, V
Foreign Claims Settlement Commission of United States	45, V
Foreign Economic Development Service	7, XXI
Foreign Service Grievance Board	22, IX
Foreign Service Impasse Disputes Panel	22, XIV
Foreign Service Labor Relations Board	22, XIV
Foreign-Trade Zones Board	15, IV
Forest Service	36, II
General Accounting Office	4, I, II, III
General Sales Manager, Office of	7, XXV
General Services Administration	
Contract Appeals Board	48, 61
Federal Acquisition Regulation	48, 5
Federal Information Resources Management Regulations	41, Subtitle E, Ch. 201
Federal Property Management Regulations System	41, 101, 105
Federal Travel Regulation System	41, Subtitle F
Payment of Expenses Connected With the Death of Certain Employees	41, 303
Reduction in Meeting and Training Allowance Payments	41, 304
Relocation Allowances	41, 302
Travel Allowances	41, 301
Geological Survey	30, IV
Government Ethics, Office of	5, XVI

Agency	CFR Title, Subtitle or Chapter
Government National Mortgage Association	24, III
Grants and Program Systems, Office of	7, XXXII
Great Lakes Pilotage	46, III
Harry S. Truman Scholarship Foundation	45, XVIII
Health and Human Services, Department of	45, Subtitle A
Child Support Enforcement, Office of	45, III
Community Services, Office of	45, X
Family Assistance, Office of	45, II
Family Support Administration	45, II, III, IV, X
Federal Acquisition Regulation	48, 3
Food and Drug Administration	21, I
Health Care Financing Administration	42, IV
Human Development Services Office	45, XIII
Inspector General, Office of	42, V
Public Health Service	42, I
Refugee Resettlement, Office of	45, IV
Social Security Administration	20, III; 45, IV
Health Care Financing Administration	42, IV
Housing and Urban Development, Department of	
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Equal Opportunity, Office of Assistant Secretary for	24, I
Federal Acquisition Regulation	48, 24
Government National Mortgage Association	24, III
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, VIII, X, XX
Inspector General, Office of	24, XII
Mortgage Insurance and Loan Programs Under Emergency Homeowners' Relief Act	24, XV
Public and Indian Housing, Office of Assistant Secretary for	24, IX
Secretary, Office of	24, Subtitle B, VII
Solar Energy and Energy Conservation Bank	24, XI
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, VIII, X, XX
Human Development Services Office	45, XIII
Immigration and Naturalization Service	8, I
Indian Affairs, Bureau of	25, I
Indian Arts and Crafts Board	25, II
Information Agency, United States	22, V; 48, 19
Information Resources Management, Office of, Agriculture Department	7, XXVII
Information Security Oversight Office	32, XX
Inspector General, Office of, Agriculture Department	7, XXVI
Inspector General, Office of, Health and Human Services Department	42, V
Inspector General, Office of, Housing and Urban Development Department	24, XII
Inter-American Foundation	22, X
Intergovernmental Relations, Advisory Commission on	5, VII
Interior Department	
Endangered Species Committee	50, IV
Federal Acquisition Regulation	48, 14
Federal Property Management Regulations System	41, 114
Fish and Wildlife Service, United States	50, I, IV
Geological Survey	30, IV
Indian Affairs, Bureau of	25, I
Indian Arts and Crafts Board	25, II
Land Management Bureau	43, II
Minerals Management Service	30, II
Mines, Bureau of	30, VI
National Park Service	36, I
Reclamation Bureau	43, I
Secretary of the Interior, Office of	43, Subtitle A
Surface Mining and Reclamation Appeals, Board of	30, III
Surface Mining Reclamation and Enforcement, Office of	30, VII

Agency	CFR Title, Subtitle or Chapter
United States Fish and Wildlife Service	50, I, IV
Internal Revenue Service	26, I
International Boundary and Water Commission, United States and Mexico	22, XI
International Cooperation and Development Office, Department of Agriculture	7, XXII
International Development, Agency for	22, II
International Development Cooperation Agency	22, XII
International Development, Agency for	22, II
Overseas Private Investment Corporation	22, VII
International Joint Commission, United States and Canada	22, IV
International Organizations Employees Loyalty Board	5, V
International Regulatory Agencies (Fishing and Whaling)	50, III
International Trade Administration	15, III; 19, III
International Trade Commission, United States	19, II
Interstate Commerce Commission	49, X
Japan-United States Friendship Commission	22, XVI
Joint Board for the Enrollment of Actuaries	20, VIII
Justice Department	28, I; 41, 128
Drug Enforcement Administration	21, II
Federal Acquisition Regulation	48, 28
Federal Claims Collection Standards	4, II
Federal Prison Industries, Inc.	28, III
Foreign Claims Settlement Commission of the United States	45, V
Immigration and Naturalization Service	8, I
Offices of Independent Counsel	28, VI
Prisons, Bureau of	28, V
Labor Department	
Benefits Review Board	20, VII
Employees' Compensation Appeals Board	20, IV
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Federal Acquisition Regulation	48, 29
Federal Contract Compliance Programs, Office of	41, 60
Federal Procurement Regulations System	41, 50
Labor-Management Relations and Cooperative Programs, Bureau of	29, II
Labor-Management Standards, Office of	29, IV
Mine Safety and Health Administration	30, I
Occupational Safety and Health Administration	29, XVII
Pension and Welfare Benefits Administration	29, XXV
Public Contracts	41, 50
Secretary of Labor, Office of	29, Subtitle A
Veterans' Employment and Training, Office of the Assistant Secretary for	41, 61; 20, IX
Wage and Hour Division	29, V
Workers' Compensation Programs, Office of	20, I
Labor-Management Relations and Cooperative Programs, Bureau of	29, II
Labor-Management Standards, Office of	29, IV
Land Management, Bureau of	43, II
Legal Services Corporation	45, XVI
Library of Congress	36, VII
Copyright Office	37, II
Management and Budget, Office of	5, III
Marine Mammal Commission	50, V
Maritime Administration	46, II
Merit Systems Protection Board	5, II
Micronesian Status Negotiations, Office for	32, XXVII
Mine Safety and Health Administration	30, I
Minerals Management Service	30, II
Mines, Bureau of	30, VI
Minority Business Development Agency	15, XIV
Miscellaneous Agencies	1, IV
Monetary Offices	31, I

Agency	CFR Title, Subtitle or Chapter
Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development	24, XV
National Aeronautics and Space Administration	14, V; 48, 18
National Agricultural Library	7, XLI
National Agricultural Statistics Service	7, XXXVI
National Archives and Records Administration	36, XII
National Bureau of Standards	15, II
National Capital Planning Commission	1, IV
National Commission for Employment Policy	1, IV
National Commission on Libraries and Information Science	45, XVII
National Credit Union Administration	12, VII
National Foundation on the Arts and the Humanities	45, XI
National Highway Traffic Safety Administration	23, II, III; 49, V
National Institute of Standards and Technology	15, II
National Labor Relations Board	29, I
National Marine Fisheries Service	50, II, IV
National Mediation Board	29, X
National Oceanic and Atmospheric Administration	15, IX; 50, II, III, IV, VI
National Park Service	36, I
National Railroad Adjustment Board	29, III
National Railroad Passenger Corporation (AMTRAK)	49, VII
National Science Foundation	45, VI; 48, 25
National Security Council	32, XXI
National Security Council and Office of Science and Technology Policy	47, II
National Telecommunications and Information Administration	15, XXIII; 47, III
National Transportation Safety Board	49, VIII
Navajo and Hopi Indian Relocation Commission	25, IV
Navy Department	32, VI; 48, 52
Neighborhood Reinvestment Corporation	24, XXV
Nuclear Regulatory Commission	10, I
Occupational Safety and Health Administration	29, XVII
Occupational Safety and Health Review Commission	29, XX
Office of Independent Counsel	28, VII
Offices of Independent Counsel, Department of Justice	28, VI
Operations Office, Department of Agriculture	7, XXVIII
Overseas Private Investment Corporation	22, VII
Oversight Board	12, XV
Packers and Stockyards Administration	9, II
Panama Canal Commission	48, 35
Panama Canal Regulations	35, I
Patent and Trademark Office	37, I
Payment of Expenses Connected With the Death of Certain Employees	41, 303
Peace Corps	22, III
Pennsylvania Avenue Development Corporation	36, IX
Pension and Welfare Benefits Administration, Department of Labor	29, XXV
Pension Benefit Guaranty Corporation	29, XXVI
Personnel Management, Office of	5, I; 45, VIII; 48, 17
Federal Employees Health Benefits Acquisition Regulation	48, 16
Postal Rate Commission	39, III
Postal Service, United States	39, I
Postsecondary Education, Office of	34, VI
President's Commission on White House Fellowships	1, IV
Presidential Documents	3
Prisons, Bureau of	28, V
Productivity, Technology and Innovation, Assistant Secretary (Commerce)	37, IV
Property Management Regulations System, Federal	41, Subtitle C
Public Contracts, Department of Labor	41, 50
Public Health Service	42, I
Railroad Retirement Board	20, II

Agency	CFR Title, Subtitle or Chapter
Reclamation Bureau	43, I
Reduction in Meeting and Training Allowance Payments	41, 304
Refugee Resettlement, Office of	45, IV
Regional Action Planning Commissions	13, V
Relocation Allowances	41, 302
Research and Special Programs Administration	49, I
Resolution Trust Corporation	12, XVI
Rural Electrification Administration	7, XVII
Rural Telephone Bank	7, XVI
Saint Lawrence Seaway Development Corporation	33, IV
Science and Technology Policy, Office of	32, XXIV
Science and Technology Policy, Office of, and National Security Council	47, II
Secret Service	31, IV
Securities and Exchange Commission	17, II
Selective Service System	32, XVI
Small Business Administration	13, I; 48, 22
Smithsonian Institution	36, V
Social Security Administration	20, III; 45, IV
Soil Conservation Service	7, VI
Solar Energy and Energy Conservation Bank, Department of Housing and Urban Development	24, XI
Soldiers' and Airmen's Home, United States	5, XI
Special Counsel, Office of	5, VIII
Special Education and Rehabilitative Services, Office of	34, III
State Department	22, I
Federal Acquisition Regulation	48, 6
Surface Mining and Reclamation Appeals, Board of	30,III
Susquehanna River Basin Commission	18, VIII
Technology Administration	15, XI
Tennessee Valley Authority	18, XIII
Thrift Supervision Office, Department of the Treasury	12, V
Trade Representative, United States, Office of	15, XX
Transportation, Department of	44, IV
Coast Guard	33, I; 46, I, III; 49, IV
Commercial Space Transportation, Office of	14, III
Contract Appeals Board	48, 63
Federal Acquisition Regulation	48, 12
Federal Aviation Administration	14, I
Federal Highway Administration	23, I, II; 49, III
Federal Railroad Administration	49, II
Maritime Administration	46, II
National Highway Traffic Safety Administration	23, II, III; 49, V
Research and Special Programs Administration	49, I
Saint Lawrence Seaway Development Corporation	33, IV
Secretary of Transportation, Office of	14, II; 49, Subtitle A
Urban Mass Transportation Administration	49, VI
Transportation, Office of, Department of Agriculture	7, XXXIII
Travel Allowance	41, 301
Travel Service, United States	15, XII
Treasury Department	17, IV
Alcohol, Tobacco and Firearms, Bureau of	27, I
Comptroller of the Currency	12, I
Customs Service, United States	19, I
Engraving and Printing, Bureau of	31, VI
Federal Acquisition Regulation	48, 10
Federal Law Enforcement Training Center	31, VII
Fiscal Service	31, II
Foreign Assets Control, Office of	31, V
Internal Revenue Service	26, I
Monetary Offices	31, I
Secret Service	31, IV
Secretary of the Treasury, Office of	31, Subtitle A
Thrift Supervision Office	12, V
United States Customs Service	19, I
Truman, Harry S. Scholarship Foundation	45, XVIII

Agency	CFR Title, Subtitle or Chapter
United States and Canada, International Joint Commission	22, IV
United States Arms Control and Disarmament Agency	22, VI
United States Customs Service	19, I
United States Fish and Wildlife Service	50, I, IV
United States Information Agency	22, V; 48, 19
United States International Development Cooperation Agency	22, XII
United States International Trade Commission	19, II
United States Postal Service	39, I
United States Soldiers' and Airmen's Home	5, XI
United States Trade Representative, Office of	15, XX
United States Travel Service	15, XII
Urban Mass Transportation Administration	49, VI
Veterans Affairs Department	38, I; 48, 8
Veterans' Employment and Training, Office of the Assistant Secretary for	41, 61; 20, IX
Vice President of the United States, Office of	32, XXVIII
Vocational and Adult Education, Office of	34, IV
Wage and Hour Division	29, V
Water Resources Council	18, VI
Workers' Compensation Programs, Office of	20, I
World Agriculture Outlook Board	7, XXXVIII

Distribution Table

The Department of Energy published the Department of Energy Acquisition Regulation (DEAR) at 49 FR 11922, Mar. 28, 1984. The regulations reorganize the Department of Energy Procurement Regulations (DOE-PR) from Title 41, Chapter 9, into Title 48, Chapter 9 (except for those regulations which are now covered by the Federal Acquisition Regulation (FAR), in Title 48, Chapter 1). The following table shows the distribution of regulations from Title 41 into the new Title 48.

Old DOE-PR: 41 CFR Sec.	Title	New DEAR/FAR: 48 CFR Sec.
9-1.050	Amendment of regulation	901.301-71
9-1.051-4	Acquisition Letters	901.301-70
9-1.250	Senior Program Official	902.100
9-1.251	Senior Procurement Official, HQ.	902.100
9-1.353	Prebidding & preproposal conferences.	FAR 14.207
9-1.354	Contract close-out	904.804-1
9-1.355	Contracts conditioned upon the availability of funds.	FAR 32.703-2
9-1.356	Solicitations conditioned upon the availability of funds.	FAR 32.705-1(a)
9-1.450	Responsibility of other Government personnel.	901.603-72
9-1.451	Contracting officer's representatives.	901.603-73
9-1.452	Standards of conduct	903.101
9-1.5	Contingent fees	903.4
9-1.606-53	Notice of proposed debarment.	FAR 9.406-3(c)
9-1.606-54	Hearing	FAR 9.406-3
9-1.606-56	Notice of final debarment determination.	FAR 9.406-3(e)
9-1.1150	Distribution of qualified products list.	FAR 9.2
9-1.5200	Purpose	904.700
9-1.5201	Applicability	904.7001
9-1.5202	Definitions	904.7002
9-1.5203	Disclosure of foreign ownership, control, or influence.	904.7003
9-1.5204	Findings, determination, and contract award or termination.	904.7004
9-1.5205	Contract clause	904.7005
9-1.5401	Scope of subpart	909.500
9-1.5402	Policy	909.570-2
9-1.5403	Definitions	909.570-3
9-1.5404	Criteria for recognizing O.C.I.	909.570-4
9-1.5405	Disclosure of O.C.I.	909.570-5
9-1.5406	Notices and representations: Action required of contracting officer.	909.570-6
9-1.5407	Disclosure or representation.	909.570-7
9-1.5408	Contract clause	909.570-8
9-1.5408-1	General contract clause	909.570-8(a)
9-1.5408-2	Special contract clause	909.570-8(b)
9-1.5409	Evaluation, findings, and contract award.	909.570-9
9-1.5410	Action in lieu of termination.	909.570-10
9-1.5412	A-E and construction contracts.	909.570-11
9-1.5413	Subcontractors & consultants.	909.570-12
9-1.5414	Remedies	909.570-13
9-3.150-5	Debriefings to unsuccessful offerors.	915.1002
9-3.151-1	Solicited proposals (includings PONs and PRDAs).	917.72 917.73
9-3.151-3	Unsolicited proposals	915.5
9-3.405-50	Cost-plus-award-fee	916.404-2
9-3.808-50	Weighted guidelines system	915.970-2
9-3.808-51	Documentation	915.970-3
9-3.808-52	Exceptions	915.970-4
9-3.808-53	Special considerations-contracts with nonprofit organizations (other than institutes).	915.970-5
9-3.808-54	Contracts with educational institutions.	915.970-6
9-3.808-55	Alternative techniques	915.970-7
9-3.808-56	Weighted guidelines application considerations.	915.970-8
9-4.050	Notice of program interest.	915.504
9-4.951	Cost participation	917.70
9-4.953	Responsible prospective contractors.	915.506-2(f)
9-4.954	Unsolicited proposals for commercial demonstrations.	915.503(c)(5)
9-4.955	Extensions	943.170
9-4.955-1	Extensions-proposals	943.170(a)
9-4.955-2	Evaluation of request for extension.	943.170(d)

Distribution Table

Old DOE-PR: 41 CFR Sec.	Title	New DEAR/FAR: 48 CFR Sec.
9-4.1004-50	Collection of data on A-E firms.	935.603
9-4.1004-51	Evaluation of qualifications and performance data.	936.602-3(a)(2)
9-4.1004-52	Conducting discussions	936.602-3(c)(3)
9-4.1004-53	Use of requests for supplemental information.	936.602-3(a)(1)
9-4.1004-54	Selection of most highly qualified firm for negotiation.	936.602-4(b)
9-4.1004-55	Late submission of qualification and performance data.	936.601
9-4.1005-50	Exemption from limitation on fees for A-E services.	936.606(f)
9-4.50	Multiple awards-phased procurements.	917.75
9-4.5000	Scope of subpart	917.7500
9-4.5001	RFP provisions	917.7501
9-4.5002	Evaluation	917.7502
9-4.5100	Scope of subpart	917.7100
9-4.5101	Definitions	917.7101
9-4.5102	General	917.7102
9-4.5103	Research program objectives.	917.7103
9-4.5104	Other objectives	917.7104
9-4.5105	Unsolicited research proposals.	917.7105
9-4.5106	Selection, preparation, and award of research contracts.	917.7106
9-4.5106-1	General	917.7106-1
9-4.5106-2	Responsibilities	917.7106-2
9-4.5106-3	Review of research proposals.	917.7106-3
9-4.5106-4	Compensation for personal services of professional staff.	917.7106-4
9-4.5106-5	Notice of selection or rejection.	917.7106-5
9-4.5106-6	Selection of field office	917.7106-5
9-4.5106-7	Information to be furnished to field offices.	917.7106-7
9-4.5106-8	Changes in scope and level.	917.7106-8
9-4.5106-9	Notification of contract execution.	917.7106-9
9-4.5107	General	917.7107-1
9-4.5107-1	Special research contracts.	917.7107-2
9-4.5108	Personal property	917.7108
9-4.5108-1	Transfer of title to equipment to nonprofit educational or research institutions.	917.7108-1
9-4.5108-2	Acquisition of excess Government personal property.	917.7108-2
9-4.5108-3	Reports	917.7108-4
9-4.5109	Reporting requirements	917.7109
9-4.5109-1	Purpose of reports	917.7109-1
9-4.5109-2	Notice of Energy R&D Project.	917.7109-2
9-4.5109-3	Progress reports	917.7109-3
9-4.5109-4	Technical reports	917.7109-4
9-4.5109-5	Special reports	917.7109-5
9-4.5109-6	Final report	917.7109-6
9-4.5109-7	Summary and distribution of reports.	917.7109-7
9-4.5110	Dissemination of results	917.7110
9-4.5110-1	Prompt dissemination	917.7110-1
9-4.5110-2	Publication	917.7110-2
9-4.5111	Extension of contracts	917.7111
9-4.5111-1	Renewal proposals	917.7111-1
9-4.5111-2	Evaluation of requests for renewals.	917.7111-2
9-4.5111-3	Authorization to renew	917.7111-3
9-4.5112	Administration	917.7112
9-4.5112-1	Responsibilities of program offices.	917.7112-1
9-4.5112-2	Responsibilities of field offices.	917.7112-2
9-4.5112-3	Payments under special research contracts.	917.7112-3
9-4.5112-4	Approval of deviations in performance and other specified actions.	917.7112-4
9-4.5300	Scope of subpart	910.004(g)
9-4.5301	Contract, lease or agreement.	910.004(g)
9-4.5400	Scope of subpart	917.303-1
9-4.5401	Definitions	917.303-1
9-4.5402	Policies	917.303-1
9-4.5501	Description of multiyear procedure.	FAR 17.103
9-4.5502	Policy	FAR 17.102
9-4.5512	Evaluation	FAR 17.103-3
9-4.5513	Award	FAR 17.103-4
9-4.5514	Special clauses for use in multiyear contracts.	FAR 17.105
9-4.5700	Scope of subpart	917.7200
9-4.5701	Applicability	917.7200(c)
9-4.5702	Policy	917.7201
9-4.5702-1	General	917.7201-1
9-4.5702-2	Determination to use and approval of content.	917.7201-2
9-4.5702-3	Federal support criteria	917.7201-3
9-4.5702-4	Information to be included in program opportunity notices.	917.7201-4
9-4.5702-5	Information to be provided in proposals offered pursuant to program opportunity notices.	917.7201-5
9-4.5703	Assistance and participation.	917.7202
9-4.5703-1	Forms of assistance and participation.	917.7202-1
9-4.5703-2	Cost participation	917.7202-2
9-4.5704	Method and criteria for evaluation and selection.	917.7203
9-4.5705	Award or support	917.7204
9-4.5706	Unsolicited proposals for commercial demonstrations.	917.7205
9-4.5707	Optional two-step method	917.7206
9-4.5800	Scope of subpart	917.7300
9-4.5801	Applicability	917.7300(c)
9-4.5802	Policy and prerequisites	917.7301
9-4.5802-1	General	917.7301-1
9-4.5802-2	Determination to use and approval of content.	917.7301-2
9-4.5802-3	Information to be included.	917.7301-3

Old DOE-PR: 41 CFR Sec.	Title	New DEAR/FAR: 48 CFR Sec.
9-4.5802-4	Information to be provided in proposals.	917.7301-4
9-4.5803	Cost participation	917.7302
9-4.5804	Method and criteria for evaluation and selection.	917.7003
9-4.5805	Award or support	917.7304
9-4.5900	Scope of subpart	917.7000
9-4.5901	Policy	917.7001
9-4.5902	Application	917.7002
9-4.5903	Amount of cost participation.	917.7003
9-4.5904	Disposition of property and equipment furnished or acquired.	917.7004
9-4.5905	Records	917.7005
9-4.5906	Payments under contracts with third party cost contributions.	917.7006
9-5.5101	Policy	951.101
9-5.5102	Use of GSA supply sources for DOE direct procurements.	951.102-(a)
9-5.5103	Use of Government sources of supply other than GSA.	951.102
9-5.5104	Exclusive use of Government work.	951.102(e)(4)(iii)
9-5.5200	Scope of subpart	908.7100
9-5.5201	Motor vehicles	908.7101
9-5.5201-1	Scope of section	908.7101-1
9-5.5201-2	Consolidated purchases of new vehicles by General Services Administration.	908.7101-2
9-5.5201-3	Direct purchase	908.7101-3
9-5.5201-4	Used vehicles	908.7101-5
9-5.5201-6	Acquisition of fuel-efficient vehicles.	908.7101-6
9-5.5203	Printing equipment and services.	908.0802
9-5.5204	Alcohol	908.7107
9-5.5205	Helium	908.7108
9-5.5206-2	Aircraft	908.7102
9-5.5206-3	DOE forms	908.7115
9-5.5206-4	Standard, optional and other agency forms.	908.7115
9-5.5206-5	Steel filing cabinets	908.7105
9-5.5206-5a	Security cabinets	908.7106
9-5.5206-8	Rental of post office boxes.	908.7118
9-5.5206-9	Government license tags	908.7101-7
9-5.5206-10	Fuels and packaged petroleum products.	908.7109
9-5.5206-11	Arms and ammunition	908.7111
9-5.5206-12	Furniture	908.7104
9-5.5206-15	Materials handling equipment replacement standards.	908.7112
9-5.5206-16	Calibration services	908.7113
9-5.5206-17	Wiretapping and eavesdropping equipment.	908.7114
9-5.5206-18	Coal	908.7110
9-5.5206-20	Procurement of electronic data processing tape.	908.7116
9-5.5207	Special materials	908.7121
9-5.5207-1	Heavy water	908.7121(a)
9-5.5207-2	Precious metals	908.7121(b)
9-5.5207-3	Jewel bearings	FAR 8.2
9-5.5400	Scope of subpart	908.7200
9-5.5401	Policy	908.7201
9-7.050	General policy	952.001
9-7.102-50	Order of precedence	952.215-18
9-7.102-54	Reporting of royalties	952.227-81
9-7.102-56	Incentive price revision (firm target).	FAR 52.216-16
9-7.103-50	Classification	952.204-70
9-7.103-51	Government property	952.245
9-7.103-53	Security	952.204-2
9-7.103-54	Organizational Conflict of Interest.	952.209
9-7.103-55	Safety and health	952.223-71
9-7.103-56	Preservation of individual occupational radiation exposure records.	952.223-75
9-7.103-57	Subcontracting plan for small business concerns and small business concerns owned controlled by socially and economically disadvantaged individuals.	952.219-9
9-7.103-58	Foreign ownership, control, or influence over contractor.	952.204-74
9-7.104-50	Priorities, allocations and Allotments.	952.212-71
9-7.104-51	Permits and licenses	FAR 52.236-7
9-7.104-52	Nuclear hazards indemnity.	952.250-70
9-7.202-50	Order of precedence	952.215-18
9-7.202-53	Reporting of royalties	952.227-81
9-7.202-59	Stop work order	FAR 52.212-13
9-7.203-50	Classification	952.204-70
9-7.203-52	Additional technical data requirements.	952.227-73
9-7.203-53	Security	952.204-2
9-7.203-54	Rights in technical data	952.227
9-7.203-55	Safety and health	952.223-71
9-7.203-56	Organizational conflicts of interest.	952.209
9-7.203-57	Preservation of individual occupational radiation exposure records.	952.223-75
9-7.203-58	See 9-7.103-57	952.219-9
9-7.203-59	Cost and schedule control systems.	952.212-73
9-7.203-60	Foreign ownership, control, or influence over contractor.	952.204-74
9-7.204-50	Priorities, allocations, and allotments.	952.212-71
9-7.204-51	Permits and licenses	FAR 52.236-7
9-7.204-52	Nuclear hazards indemnity.	952.250-70
9-7.302-50	Order of precedence	952.215-18
9-7.302-54	Additional technical data requirements.	952.227-73
9-7.302-55	Rights in technical data—long form.	952.227-75
9-7.302-56	Reporting of royalties	952.227-81
9-7.302-57	Printing	952.208-70
9-7.302-59	Incentive price revision (firm target).	FAR 52.216-16
9-7.303-53	Security	952.204-2
9-7.303-54	Organizational conflicts of interest.	952.209
9-7.303-55	Safety and health	952.223-71

Distribution Table

Old DOE-PR: 41 CFR Sec.	Title	New DEAR/FAR: 48 CFR Sec.
9-7.303-56	Preservation of individual occupational radiation exposure records.	952.223-75
9-7.303-57	See 9-7.103-57	952.219-9
9-7.303-59	Foreign ownership, control, or influence over contractor.	952.204-74
9-7.304-50	Priorities, allocations, and allotments.	952.212-71
9-7.304-51	Permits and licenses	FAR 52.236-7
9-7.304-53	Nuclear hazards indemnity.	952.250-70
9-7.402-50	Order of precedence	952.215-18
9-7.402-54	Additional technical data requirements.	952.227-73
9-7.402-55	Rights in technical data—long form.	952.227-75
9-7.402-56	Reporting of royalties	952.227-81
9-7.402-57	Printing	952.208-70
9-7.402-59	Stop work order	FAR 52.212-13
9-7.402-60	Foreign travel	952.247-70
9-7.403-71	Security	952.204-2
9-7.403-72	Organizational conflicts of interest.	952.209
9-7.403-73	Safety and health	952.223-71
9-7.403-74	Preservation of individual occupational radiation exposure records.	952.223-75
9-7.403-75	See 9-7.103-57	952.219-9
9-7.403-76	Cost and schedule control systems.	952-212-73
9-7.403-77	Foreign ownership, control, or influence over contractor.	952.204-74
9-7.404-50	Priorities, allocations, and allotments.	952.212-71
9-7.404-51	Permits and licenses	FAR 52.236-7
9-7.404-54	Nuclear hazards indemnity.	952.250-70
9-7.602-53	Reporting of royalties	952.227-81
9-7.603-50	Classification	952.204-70
9-7.603-51	Notice to the Government of labor disputes.	FAR 52.222-1
9-7.603-52	Additional technical data requirements.	952.227-73
9-7.603-53	Security	952.204-2
9-7.603-55	Rights in technical data—long form.	952.227-7500
9-7.603-57	Preservation of individual occupational radiation exposure records.	952.223-75
9-7.603-58	Safety and health	952.223-71
9-7.603-59	Privacy act	FAR 52.224-2
9-7.603-60	See 9-7-103-57	952.219-9
9-7.603-62	Foreign ownership, control, or influence over contractor.	952.204-74
9-7.604-50	Priorities, allocations, and allotments.	952.212-71
9-7.604-51	Nuclear hazards indemnity.	952.250-70
9-7.703-55	See 9-7.103-57	952-219-9
9-7.704-50	Limitation of price and contractor performance (multiyear contracts).	FAR 52.217-1
9-7.704-51	Cancellation (multiyear contracts).	FAR 52.217-2
9-7.704-52	Nuclear hazards indemnity.	952.250.70
9-7.704-53	Preservation of individual occupational radiation exposure records.	952.223-75
9-7.704-54	Safety and health	952.223-71
9-7.704-55	Foreign ownership, control, or influence over contractor.	952.204-74
9-7.802-50	Order of precedence	952.215-18
9-7.803-50	Classification	952.204-70
9-7.803-53	Security	952.204-2
9-7.803-54	Preservation of individual occupational radiation exposure records.	952.223-75
9-7.803-55	Safety and health	952.223-71
9-7.805-56	See 9-7.103-57	952.219-9
9-7.803-57	Foreign ownership, control, or influence over contractor.	952.204-74
9-7.804-50	Priorities, allocations, and allotments.	952.212-71
9-7.902-50	Order of precedence	952.215-18
9-7.902-52	Reporting of royalties	952.227-81
9-7.902-53	Utilization of women-owned business concerns.	FAR 52.219-13
9-7.902-54	Stop work order	FAR 52.212-13
9-8.751	Termination article for CPFF A-E contracts.	949.505
9-10.150	Fidelity bonds	928.170
9-10.250	Corporate co-sureties	928.202-1
9-10.251	Partnerships as sureties	928.202-70
9-10.252	Substitution or replacement of a surety.	928.202-71
9-10.5000	Scope of subpart	950.7000
9-10.5001	Applicability	950.7001
9-10.5002	Definitions	950.7002
9-10.5003	Statutory Indemnity section 170d of the Atomic Energy Act of 1979, as amended.	950.7003
9-10.5004	Authority of Head of Procuring Activities to negotiate statutory indemnity agreements.	950.7004
9-10.5005	Substantial nuclear incident.	950.7005
9-10.5006	Statutory indemnity contract article.	950.7006
9-10.5007	Contractual assurance	950.7007
9-10.5008	Representation for use in subcontracts and purchase orders of prime contractors holding statutory indemnity agreement.	950.7008
9-10.5009	Fees	950.7009
9-10.5010	Financial protection requirement.	950.7010
9-10.5011	General contract authority indemnity.	950.7011
9-10.5012	Service-type insurance policies.	928.370
9-15.5000	Scope of subpart	970.3100
9-15.5001	Definitions	970.3100-1
9-15.5004	Advance understanding on particular cost items.	970.3101-6
9-15.5005	Direct and indirect costs	970.3101-6

Old DOE-PR: 41 CFR Sec.	Title	New DEAR/FAR: 48 CFR Sec.
9-15.5006	Application of basic policies to particular situations.	970.3102
9-15.5006-1	Overtime, shift and holiday premiums.	970.3102-10
9-15.5006-2	Outside technical and professional consultants.	970.3102-9
9-15.5006-3	Severance pay	970.3102-2(i)
9-15.5006-4	Precontract costs	970-3102-13
9-15.5006-5	Plant reconversion costs	970.3102-12
9-15.5006-6	Depreciation	970.3102-4
9-15.5006-7	Compensation for personal services.	970.3102-2
9-15.5006-8	Air travel	970.3102-17
9-15.5006-9	Page changes in scientific journals.	970-3102-11
9-15.5006-10	Special funds in the construction industry.	970.3102-18
9-15.5006-11	Employee morale, health welfare, food service and dmomitory costs.	970.3102-5
9-15.5006-13	Relocation costs	970.3102-16
9-17.204-50	General	FAR 50.301
9-18.306-50	Preparation for negotiation A-E and CPFF construction contracts.	936.7200
9-18.650	Excepted supplies to be used in the construction alternation or repair of any public work.	936.202(b)
9-18.5000	Scope of subpart	936.7000
9-18.5001	General policy	936.7001
9-18.5002	Rental of contractor-owner equipment.	937.7002
9-18.5002-1	Rental agreements	936.7002-1
9-18.5002-2	Rental period	936.7002-2
9-18.5002-3	Rental rates	936.7002-3
9-18.5002-4	Application of rates	936.7002-4
9-18.5002-5	Insurance	936.7002-5
9-18.5002-6	Rental limitation	936.7002-6
9-18.5002-7	Record of negotiation	936.7002-7
9-18.5002-8	Responsibility for repair and replacement.	936.7002-8
9-18.5002-9	Equipment condition and inspection.	936.7002-9
9-18.5003	Rental of third-party-owned equipment.	936.7003
9-18.5003-1	Rental agreement	936.7003-1
9-18.5003-2	Rental rates	936.7003-2
9-18.5003-3	Insurance	936.7003-3
9-18.5003-4	Option to purchase equipment.	936.7003-4
9-18.5100	Scope of subpart	936.7100
9-18.5120	Construction contracts	936.7102
9-50.104	Small business and small disadvantaged business concerns (FPR 1-1.7 and 1-1.13).	970.19
9-50.109-2	Architect-engineering/construction services.	970.3607
9-50.109-3	Protection and private use of information and data by contractor.	970.2701
9-50.201	Procedures for handling mistakes under operating and on-site service contractor procurement.	970.4405
9-50.302-1	General	970.4401
9-50.302-2	Responsibility of contracting officers.	970.4402
9-50.302-3	Policies	970.4403
9-50.302-4	Procurement from contractor-controlled sources.	970.4404
9-50.302-5	Review and approval	970.4407
9-50.306	Profit and fees	970.1509-1
9-50.306-5	Limitations	970.1509-5
9-50.306-6	Fee base	970.1509-6
9-50.306-7	Special equipment purchases.	970.1509-7
9-50.306-8	Special considerations-award fee.	970.1509-8
9-50.401	Public utilities	970.0803
9-50.402	Nuclear material transfers	970.4409
9-50.501	Excess personal property	979.0801
9-50.502	Interagency motor pool vehicles and related services.	970.5102
9-50.505	Use of Government sources of supply.	970.5101
9-50.506	Procurement of special items.	970.5106
9-50.507	Purchase or lease determinations.	970.5107
9-50.701	General policy	970.5201
9-50.702	Deviations	970.5202
9-50.703	Modifications and notes to FPR clauses, in addition to those set forth in DOE-PR Part 19-7.	970.5203
9-50.703-1	Convenant against contingent fees.	970.5203-1
9-50.703-4	Examination or records by Comptroller General.	970.5203-2
9-50.703-5	Buy American Act	970.5203-3
9-50.704	Clauses to be used in addition to or in place of the contract clause set forth in FPR Part 1-7 and DOE-PR Part 9-7, where appropriate.	970.5204
9-50.704-1	Security	970.5204-1
9-50.704-2	Safety and health	970.5204-2
9-50.704-3	Buy American Act (construction).	970.5204-3
9-50.704-4	Classification	970.5204-4
9-50.704-5	Disclosure of information	970.5204-5
9-50.704-6	Nuclear hazards indemnity.	970.5204-6
9-50.704-7	Nuclear hazards indemnity product liability.	970.5204-7
9-50.704-8	Indemnity assurance to architect-engineer or supplier prior to operation of a production or utilization facility.	970.5204-8
9-50.704-9	Accounts, records, and inspection.	970.5204-9
9-50.704-11	Changes	970.5204-11
9-50.704-12	Contractor's organization	970 5204-12

Distribution Table

Old DOE-PR: 41 CFR Sec.	Title	New DEAR/FAR: 48 CFR Sec.
9-50.704-13	Allowable costs and fixed fee (CPFF operating and construction contracts).	970.5204-13
9-50.704-14	Allowable costs and fixed fee (CPFF operating and construction contracts).	970.5204-14
9-50.704-17	Obligation of funds	970.5204-15
9-50.704-16	Payments and advances	970.5204-16
9-50.704-19	Special bank account agreement.	970.5204-17
9-50.704-21	Property	970.5204-21
9-50.704-22	Contractor procurement	970.5204-22
9-50.704-23	Taxes	970.5204-23
9-50.704-24	Subcontractor cost or pricing data.	970.5204-24
9-50.704-25	Workmanship and materials.	970.5204-25
9-50.704-26	Nuclear facility safety applicability.	970.5204-26
9-50.704-27	Consultant or other comparable employment service of contractor employees.	970.5204-27
9-50.704-28	Assignment	970.5204-28
9-50.704-29	Permits and licenses	970.5204-29
9-50.704-30	Notice of labor disputes	970.5204-30
9-50.704-31	Litigation and claims	970.5204-31
9-50.704-32	Required bonds and insurance—exclusive of Government property (cost-type contracts).	970.5204-32
9-50.704-33	Priorities, allocations, and allotments.	970.5204-33
9-50.704-34	Soviet-Bloc controls (unclassified research with educational institutions).	970.5204-34
9-50.704-35	Controls in the national interest (unclassified contracts with educational institutions).	970.5204-35
9-50.704-37	Statement of work (cost-type contracts).	970.5204-37
9-50.704-38	Special clause for operating contracts.	970.5204-38
9-50.704-41	Preservation of individual occupational radiation exposure records.	970.5204-41
9-50.704-42	Key personnel	970.5204-42
9-50.704-43	Other contracts	970.5204-43
9-50.704-45	Termination article for operating contracts.	970.5204-45
9-50.704-48	Cost and schedule control systems.	970.5204-50
9-50.800	Scope of applicability	970.4901
9-50.801	Clause	970.4902
9-50.1001	Bid guarantees	FAR 28.101
9-50.1002	Performance bonds	970.2801
9-50.1003	Payment bonds	970.2803
9-50.1004	Execution and administration of bonds.	828.101-70
9-50.1006	Corporate co-sureties	970.2805
9-50.1007	Partnerships as sureties	928.202-70
9-50.1008	Substitution or replacement of a surety.	928.202-71
9-50.1101	Exemptions from Federal excise taxes.	970.2901
9-50.1102	State and local taxes	970.2902
9-50.1103	Contract clauses	970.2903
9-50.1201	Basic labor policies	970.2201
9-50.1201-2	Labor relations (contractor personnel management, and labor relations).	FAR 22.101
9-50.1202	Convict labor	970.2202
9-50.1203	Contract Work Hours and Safety Standards Act (other than construction contracts).	970.2203
9-50.1204	Walsh-Healey Public Contracts Act.	970.2206
9-50.1205	Equal opportunity in employment.	970.2208
9-50.1207	Service Contract Act	970.2210
9-50.1211	Unemployment compensation.	970.2270
9-50.1212	Worker's compensation insurance.	970.2271
9-50.1213	Conduct of employees and consultants of DOE operating, on-site, and certain other contractors.	970.2272
9-50.1402	Contract articles relating to inspection and acceptance.	970.4601
9-50.1500	Scope and applicability of subpart.	970.3100
9-50.1501	Definitions	970.3100-1
9-50.1502	Responsibilities	970.3100-2
9-50.1503	Deviation	970.3100-3
9-50.1505	General policy	970.3101
9-50.1505-1	Actual cost basis	970.3101-1
9-50.1505-4	Cost determination based on audit.	970.3101-4
9-50.1505-5	Contractor's system of accounting.	970.3101-5
9-50.1506	Advanced understandings on particular cost items.	970.3101-6
9-50.1507	Direct and indirect	970.3101-2
9-50.1509-5	General and administrative expenses.	970.3102-1
9-50.1510	Application of basic principles to particular situations.	970.3102
9-50.1510-5	Overtime, shift, and holiday premiums.	970.3102-10
9-50.1510-6	Outside technical and professional consultants.	970.3102-9
9-50.1510-7	Preparatory and make-ready costs.	970.3102-14
9-50.1510-8	Severance pay	970.3102-2(i)
9-50.1510-9	Precontract costs	970.3102-13
9-50.1510-10	Plant reconversion costs	970.3102-12
9-50.1510-11	Depreciation	970.3102-4
9-50.1510-14	Compensation for personal services.	970.3102-2
9-50.1510-15	Air travel	970.3102
9-50.1510-16	Page charges in scientific journals.	970.3102-11
9-50.1510-17	Special funds in the construction industry.	970.3102-18
9-50.1510-18	Employee morale, health, welfare, food service, and dormitory costs.	970.3102-5
9-50.1510-20	Relocation costs	970.3102-16
9-50.1801-1	Government estimates	970.3601

Old DOE-PR: 41 CFR Sec.	Title	New DEAR/FAR: 48 CFR Sec.
9-50.1801-2	Specifications	970.3602
9-50.1804	Labor standards	970.3603
9-50.1804-2	Special clause for operating contracts.	970.3606
9-50.1805	Inspection	970.3608
9-51.300	Scope of subpart	971.100
9-51.301	Applicability	971.201
9-51.302	Responsibilities	971.202
9-51.303	Assignment or review functions.	971.203
9-51.401	Contracts let under long-term contract authority.	971.201

List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the FEDERAL REGISTER since March 28, 1984, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to Federal Register pages. The user should consult the entries for chapters and parts as well as sections for revisions.

1984

48 CFR

	49 FR Page
Chapter 7	
Chapter 7 Chapter established	13236
701—705 (Subchapter A) Added	13236
701 Added	13236
701.105 (Subpart 701.1) Added	33667
701.372 (a) revised	33667
702 Added	13238
703 Added	13239
704 Added	13239
705 Added	13240
707—709 (Subchapter B) Added	13240
707 Heading added	13240
708 Added	13240
709 Added	13240
714—717 (Subchapter C) Added	13240
713 Added	31898
714 Added	13240
715 Added	13240
716 Added	13243
717 Added	13243
719—725 (Subchapter D) Added	13243
719 Added	13243
722 Added	13246
724 Added	13248
725 Added	13248
728—733 (Subchapter E) Added	13249
728 Added	13249
731 Added	13250
731.205-6 (a)(3) revised; (a)(4) added	33667
731.371 (c) and (d) added	33668
731.772 (c) and (d) added	33668
732 Added	13252

48 CFR—Continued

	49 FR Page
Chapter 7—Continued	
732.406-70-2 (a)(3) amended	33668
732.406-70-3 Nomenclature change	33668
732.406-70-5 Nomenclature change	33668
733 Added	13253
736—737 (Subchapter F) Added	13254
736 Added	13254
737 Added	13255
742—750 (Subchapter G) Added	13256
742 Added	13256
749 Added	13256
750 Added	13257
750.7101 Revised	49472
750.7103 (b) revised; (c) removed; (d) redesignated as (c)	49472
752—753 (Subchapter H) Added	13259
752 Added	13259
752.204-2 Amended	33668
752.216-70 Removed	33668
752.228-70 (a) amended	33668
752.232-70 Amended	33668
752.7002 (d) amended	33668
752.7003 (a) amended	49472
752.7004 Amended	49473
752.7007 Amended	33669
752.7016 Amended	33669
752.7018 Amended	33669
753 Added	13276
753.300 Redesignated as 753.370-1	33669
753.370-1 Redesignated from 753.300-1	33669
Chapter 7 Appendixes A through I added	13286

48 CFR—Continued

49 FR Page

Chapter 7—Continued
Appendix F Attachment correctly designated, heading revised, and text amended..........33669

Chapter 8

Chapter 8 Chapter established; interim..........12583
801—805 (Subchapter A) Added; interim..........12583
801 Added; interim..........12583
802 Added; interim..........12591
803 Added; interim..........12592
804 Added; interim..........12592
805 Added; interim..........12592
808—812 (Subchapter B) Added; interim..........12593
808 Added; interim..........12593
809 Added; interim..........12594
810 Added; interim..........12597
812 Added; interim..........12598
813—817 (Subchapter C) Added; interim..........12599
813 Added; interim..........12599
814 Added; interim..........12599
815 Added; interim..........12604
816 Added; interim..........12607
817 Added; interim..........12608
819—825 (Subchapter D) Added; interim..........12508
819 Added; interim..........12608
820 Added; interim..........12610
822 Added; interim..........12610
823 Added; interim..........12611
824 Added; interim..........12611
825 Added; interim..........12611
828—833 (Subchapter E) Added; interim..........12583
828 Added; interim..........12612
829 Added; interim..........12614
831 Added; interim..........12615
832 Added; interim..........12616
833 Added; interim..........12617
834—837 (Subchapter F) Added; interim..........12618
834 Added; interim..........12618
836 Added; interim..........12618
837 Added; interim..........12620
842—849 (Subchapter G) Added; interim..........12624
842 Added; interim..........12624
846 Added; interim..........12625
847 Added; interim..........12627
849 Added; interim..........12628
852—871 (Subchapter H) Added; interim..........12629
852 Added; interim..........12629
853 Added; interim..........12639

48 CFR—Continued

49 FR Page

Chapter 8—Continued
870 Added; interim..........12640
871 Added; interim..........12641

Chapter 9

Chapter 9 Chapter established..........11935
901—905 (Subchapter A) Added; interim..........11936
901 Added..........11936
Authority citation corrected..........38949
902 Added..........11940
902.100 Corrected..........38949
903 Added..........11940
904 Added..........11941
904.404 Correctly designated..........38949
904.601-70 (b) introductory text corrected..........38949
905 Added..........11943
907—912 (Subchapter B) Added..........11935
907 Added..........11944
908 Added..........11945
908.802 (b) corrected..........38949
908.1170 (a) corrected..........38949
908.7001 Table of contents heading corrected..........38949
908.7101-2 (a) corrected..........38949
908.7101-3 Corrected..........38950
908.7101-5 Corrected..........38950
908.7101-6 (a) corrected..........38950
908.7101-7 (b) corrected..........38950
908.7105 Corrected..........38950
908.7106 (a) corrected..........38950
908.7111 (a), (b), and (c) correctly added..........38950
909 Added..........11949
910 Added..........11953
910.004 (g)(2)(v) corrected..........38950
912 Added..........11954
913—917 (Subchapter C) Added..........11935
913 Added..........11954
913.4 Table of contents heading corrected..........38949
914 Added..........11954
914.407-70 (c) corrected..........38950
915 Added..........11955
915.307 Heading corrected..........38950
915.406-5 (a) (3) and (4) introductory text corrected..........38950
915.504 (b)(6)(iii)(B) corrected..........38950
915.506-2 (a) introductory text corrected and (f) correctly designated..........38950
915.612 (d) corrected..........38950
915.805-70 (c)(1) corrected..........38950

48 CFR—Continued

Chapter 9—Continued

	49 FR Page
915.971-6 (b)(6) and (c) corrected	38950
915.1002 (a) corrected	38950
916 Added	11972
917 Added	11974
917.505-70 (b) and (c) corrected	38950
917.7113 Appendixes A and B corrected	38950
917.7203 Correctly designated	38950
919—925 (Subchapter D) Added	11935
919 Added	11997
920 Added	11997
922 Added	11998
922.470 (c) (2) and (4) corrected	38950
922.471 (g)(3) corrected	38950
922.472 (b)(1) corrected	38951
922.803 (d) corrected	38951
922.7001 (b), (e), and (f)(1) corrected	38951
923 Added	12003
924 Added	12003
925 Added	12003
925.102 (b) correctly designated and corrected	38951
927—933 (Subchapter E) Added	11935
927 Added	12004
927.402-3 (d)(3) corrected	38951
928 Added	12010
931 Added	12011
931.205-32 (a) corrected	38951
932 Added	12011
933 Added	12016
935—937 (Subchapter F) Added	11935
935 Added	12016
936 Added	12016
936.601 Corrected	38951
936.602-2 (a) corrected	38951
936.602-3 (a)(2) and (e) corrected	38951
936.605 (c)(3) corrected	38951
936.7002-3 (a) corrected	38951
936.7002-9 (a) corrected	38951
936.7301 Corrected	38951
937 Added	12026
942—951 (Subchapter G) Added	11936
942 Added	12026
943 Added	12031
943.170 (c)(2) corrected	38951
944 Added	12031
944.307 (b) corrected	38951

48 CFR—Continued

Chapter 9—Continued

	49 FR Page
945 Added	12032
945.104-70 (a)(6) corrected	38951
945.570-8 (a) corrected	38951
945.608-2 Table of contents heading and (b)(1)(ii) corrected	38951
945.610-4 Corrected	38951
947 Added	12038
949 Added	12038
950 Added	12039
951 Added	12042
951.102 (c)(1) corrected	38951
952 (Subchapter H) Added	11936
952 Added	12042
952.204-2 Clause (a) heading correctly added	38951
952.204-71 Heading and clause heading corrected	38951
952.204-72 Clause heading corrected	38951
952.204-73 Clause heading corrected	38951
952.208-70 Introductory text and clause corrected	38951
952.215-70 Corrected	38951, 48928
952.223-72 Clause heading corrected	38952
952.223-75 Introductory text corrected	38952
952.227-73 Clause heading corrected	38952
952.227-75 Clause heading corrected	38952
952.227-76 Clause heading corrected	38952
952.227-77 Clause heading corrected	38952
952.231-70 Introductory text corrected	38952
952.236-70 Corrected	38952
952.236-72 Introductory text corrected	38952
952.249-70 Clause (b)(2) corrected	38952
952.250-70 Introductory text and clause (a)(2) corrected	38952
952.250-71 Clause heading corrected	38952
970—971 (Subchapter I) Added	11936
970 Added	12063
970.0404-1 Corrected	38952
970.0402-2 (b) corrected	38952
970.0404-4 (a)(2) and (b) corrected	38952

48 CFR—Continued

	49 FR Page
Chapter 9—Continued	
970.0803 (b) corrected.	38952
970.0905 (a) corrected	38952
970.1901 (d) corrected	38952
970.2272 (f) corrected	38952
970.2273 (a), (3), (4), (5), (6), (c)(1) introductory text and (5)	38952
970.2303-2 (d) corrected	38952
970.2501 Text designated as (a), (b), and (c) added ((b) and (c) redesignated from 9-50.601-2 (a) and (b))	38952
970.3102-2 (d) revised	26744
(b)(1) corrected	38953
970.3102-9 Corrected	38953
970.4404 (c)(1) corrected	38953
970.4405 (a)(4)(iv) corrected	38953
970.4407 (b)(1) corrected	38953
970.5101 (g) corrected	38953
970.5204-12 (b) and (c) corrected	38953
970.5204-13 (d)(8)(i) corrected	38953
970.5204-21 (d) and (f) introductory text corrected	38953
970.5204-24 (a) clause correctly designated; (b) and (c) correctly designated	38953
970.5204-27 (a) and (b) introductory texts corrected	38953
970.5204-31 (b) corrected	38953
970.5204-33 (b) clause corrected	38953
970.5204-38 Introductory text corrected	38953
971 Added	12107
Heading corrected	38953
Chapter 10	
Chapter 10 Chapter established	12703
1033 (Subchapter E and Part) Added (regulations transferred from 41 Part 10-60)	12703
Chapter 12	
Chapter 12 Chapter established	22923
1201—1205 (Subchapter A) Heading added	22923
1201 Added	22923
1202 Added	22925
1203 Added	22926
1204 Added	22927
1205 Added	22927
1207—1212 (Subchapter B) Heading added	22923
1207 Added	22928
1209 Added	22928
1210 Added	22928

48 CFR—Continued

	49 FR Page
Chapter 12—Continued	
1212 Added	22929
1213—1217 (Subchapter C) Heading added	22923
1213 Added	22929
1214 Added	22930
1215 Added	22930
1216 Added	22935
1217 Added	22936
1219—1225 (Subchapter D) Heading added	22923
1219 Added	22936
1222 Added	22937
1223 Added	22939
1224 Added	22939
1225 Added	22939
1227—1233 (Subchapter E) Heading added	22923
1227 Added	22940
1228 Added	22946
1229 Added	22946
1230 Added	22947
1231 Added	22947
1232 Added	22947
1233 Added	22948
1234—1237 (Subchapter F) Heading added	22923
1234 Added	22948
1235 Added	22948
1236 Added	22948
1237 Added	22951
1242—1250 (Subchapter G) Heading added	22923
1242 Added	22952
1244 Added	22953
1245 Added	22953
1246 Added	22956
1249 Added	22956
1250 Added	22956
1252—1253 (Subchapter H) Heading added	22923
1252 Added	22956
1253 Added	22969
Chapter 13	
Chapter 13 Chapter established	12956
1301—1305 (Subchapter A) Added	12956
1301 Added	12956
1302 Added	12958
1303 Added	12959
1305 Added	12959
1307—1309 (Subchapter B) Added	12959
1307 Added	12959
1308 Added	12959
1309 Added	12960

48 CFR—Continued	49 FR Page
Chapter 13—Continued	
1313—1317 (Subchapter C) Added	12961
1313 Added	12961
1314 Added	12961
1315 Added	12961
1316 Added	12962
1317 Added	12963
1319—1325 (Subchapter D) Added	12963
1319 Added	12963
1322 Added	12963
1324 Added	12963
1325 Added	12963
1331—1333 (Subchapter E) Added	12963
1331 Added	12963
1332 Added	12963
1333 Added	12964
1334—1337 (Subchapter F) Added	12964
1334 Added	12964
1336 Added	12964
1337 Added	12965
1342—1345 (Subchapter G) Added	12965
1342 Added	12965
1345 Added	12965
1352—1353 (Subchapter H) Added	12965
1352 Added	12965
1353 Added	12965
Chapter 14	
Chapter 14 Chapter established	14252
1401—1404 (Subchapter A) Added	14252
1401 Added	14252
1403 Added	14254
1404 Added	14254
1407—1410 (Subchapter B) Added	14256
1407 Added	14256
1409 Added	14256
1410 Added	14257
1413—1415 (Subchapter C) Added	14257
1413 Added	14257
1414 Added	14258
1415 Added	14259
1419—1425 (Subchapter D) Added	14262
1419 Added	14262
1420 Added	14263
1424 Added	14263
1425 Added	14264

48 CFR—Continued	49 FR Page
Chapter 14—Continued	
1428—1433 (Subchapter E) Added	14264
1428 Added	14264
1432 Added	14265
1433 Added	14265
1436—1437 (Subchapter F) Added	14266
1436 Added	14266
1437 Added	14267
1442 (Subchapter G and Part) Added	14267
1452—1453 (Subchapter H) Added	14267
1452 Added	14267
1453 Added	14272

1985

48 CFR	50 FR Page
Chapter 7	
701 Authority citation revised	23712
701.105 Amended	23712
701.376-1 Amended	50301
701.376-4 Amended	50302
701.470 (a)(2), (b)(2) and (3)(i), (e), and (f)(1) amended	50302
702 Authority citation revised	23712
702.170-3 Revised	16085
(b) revised	40528
(a) amended	50302
702.170-9 Revised	52780
702.170-10 (b) revised	40528
(a) revised	50302
702.170-13 Revised	52781
702.170-10 Revised	16085
702.170-14 Redesignated as 702.170-15; new 702.170-14 added; interim	16086
702.170-15 Redesignated as 702.170-16; new 702.170-15 redesignated from 702.170-14; interim	16086
702.170-16 Redesignated from 702.170-15; interim	16086
703 Authority citation revised	23712
704 Authority citation revised	23712
705 Authority citation revised	23712
Revised; interim	40976
Confirmed	51396
705.001 Redesignated as 705.002; interim	16086
705.002 Redesignated from 705.001; interim	16086
706 Added; interim	16086

48 CFR—Continued

50 FR Page

Chapter 7—Continued

706.003 Added.......40528
706.101-70 Revised.......33053
706.302-70 Added; interim.......40976
Confirmed.......51395
706.501 (Subpart 706.5) Added... 40528
708 Authority citation revised.... 23712
709 Authority citation revised.... 23712
709.104-3 (Subpart 709.1) Added.......23712
713 Authority citation revised.... 23712
714 Heading revised; interim.......16086
Authority citation revised.......23712
715 Authority citation revised...16087, 23712
715.270 (Subpart 715.2) Removed; interim.......16087
715.504 (a) amended.......50302
715.506 Amended.......50302
715.507 Removed; interim.......16087
715.608 Redesignated as 715.608-70 and (b)(1)(iii) revised; interim.......16087
715.608-70 Redesignated from 715.608 and (b)(1)(iii) revised; interim.......16087
715.613 Removed; new 715.613 added; interim.......16087
715.613-70 Removed; new 715.613-70 added; interim.......16087
(a), (c), and (d)(1), (2), (3), (5), and (8) revised.......33053
715.613-70-1—715.613-70-4 Removed; interim.......16087
715.613-71 Removed; new 715.613-71 added; interim.......16087
(b)(1)(ii), (d)(2), (e)(1), (2)(ii) and (iii), (3)(iii), (4), (5), and (7) revised.......33053
715.613-71-1—715.613-71-5 Removed; interim.......16087
715.1002 (Subpart 715.10) Removed; interim.......16088
716 Authority citation revised.... 23712
717 Authority citation revised.... 23712
719 Authority citation revised.... 23712
722 Authority citation revised.... 23712
724 Authority citation revised.... 23712
725 Authority citation revised.... 23712
728 Authority citation revised.... 23712
728.105-1 (b) amended.......50302
728.302 Amended.......50302
731 Authority citation revised.... 23712
731.109 Amended.......50302
731.205-6 (a)(3) and (b)(2) amended.......50302
731.371 (a) and (c) amended.......50302

48 CFR—Continued

50 FR Page

Chapter 7—Continued

731.770 (a) amended.......50302
731.772 (c) amended.......50303
732 Authority citation revised.... 23712
732.406-70-2 (a)(1) and (3) amended.......50303
733 Authority citation revised.... 23712
734 Added.......38657
736 Authority citation revised.... 23712
737 Authority citation revised.... 23712
737.270 (c)(2) amended.......50303
742 Authority citation revised.... 23712
749 Authority citation revised.... 23712
750 Authority citation revised.... 23712
750.7000 (b) amended.......50303
(b) corrected.......53325
750.7105 Revised.......16086
750.7107 (a)(3) removed; (a)(4) redesignated as (a)(3); interim.......16088
750.7109-1 Amended.......50303
750.7110-1 Amended.......50303
750.7110-2 Amended.......50303
750.7110-3 Amended.......50303
752 Authority citation revised.... 23712
752.209-70 Added.......23712
752.7002 (d) amended.......50303
752.7004 Amended.......50303
752.7020 Amended; interim.......16088
753 Authority citation revised.... 23712
753.107 Amended.......50303
Chapter 7 Appendix A and F amended; interim.......16088
Appendixes A through I authority citation revised.......23712
Appendixes B, C, F, G, and H amended.......50303
Appendix E removed.......25712

Chapter 8

Chapter 8 Table of contents corrected.......790
801 Authority citation.......790
801.301-70 (c) table revised.......790
801.602 (a) introductory text revised.......790
801.602-70 (a)(4)(x) and (xi) added.......791
801.670-2 (b) amended.......791
801.670-12 (b) amended.......791
801.670-14 (a)(9) revised; (c) amended.......791
801.680 (d) revised.......791
802 Authority citation.......790
802.100 Amended.......791
803.409 (b) amended.......791
805 Authority citation.......790

48 CFR—Continued

50 FR Page

Chapter 8—Continued

805.207 (a) introductory text revised.....791
808.307-70 Corrected.....791
809.403 Corrected.....791
809.406-3 (a) amended; (b)(3) corrected.....791
809.508-2 Amended.....791
810 Authority citation.....790
810.005 (b) revised.....791
810.006 (a) introductory text, (c)(1), (e)(1) amended; (c)(4) revised.....791
810.011 Amended.....791
814 Authority citation.....790
814.201 (e)(2) and (f)(2) amended.....791
814.302 Amended.....791
814.402 (b) corrected.....792
814.407-8 (a) and (d)(1) amended.....792
815 Authority citation.....790
815.103—815.104 (Subpart 815.1) Heading amended.....792
815.204 (b) amended; (d)(1) revised.....792
815.207 (c)(5) revised.....792
815.211 Revised.....792
815.804-70 Amended.....792
816 Authority citation.....790
816.102 (a)(2) amended.....792
816.603 Amended.....792
819 Authority citation.....790
819.202-70 (m) and (n) amended.....792
819.502-2 (a) introductory text and (d) revised; (b)(3) and (4) removed.....792
819.502-3 Revised.....792
819.801 (b) and (d) revised.....792
819.803 Added.....793
819.804 Added.....793
819.806-2 Added.....793
819.806-4 Added.....793
819.7001—819.7004 (Subpart 819.70) Added.....793
823 Removed.....793
825 Authority citation.....790
825.102-70 (b) amended.....794
825.202-70 (c) amended; (d) added.....794
829 Authority citation.....790
829.270-2 (b) amended.....794
830 Authority citation.....790
836.302 Amended.....794
836.371 (a) amended.....794
837 Authority citation.....790

48 CFR—Continued

50 FR Page

Chapter 8—Continued

837.104 (a) amended.....794
837.205 (c)(1) and (2) and (d)(3) amended.....794
837.270 (d) amended.....794
837.271-3 (a)(2) corrected.....794
837.271-4 (a) amended.....794
837.200—837.271-5 (Subpart 837.2) Appendix A amended.....794
837.7003 (b)(5), (d), and (e) amended.....794
837.7004 (b) and (c) amended.....794
837.7005 Amended.....794
842 Authority citation.....790
842.000 Amended.....794
842.102 (b) introductory text amended.....794
842.202 Amended.....794
852 Authority citation.....790
852.101 Revised.....794
852.203-70 Amended.....794
852.208-70 Amended.....794
852.209-70 Amended.....794
852.210-70 Revised.....795
852.210-71 (a) amended.....794, 796
852.210-72 (a) amended.....794
852.210-73 Amended.....794, 796
852.210-74 (a) amended.....794, 796
852.210-75 Amended.....794, 796
852.210-76 Amended.....794
852.210-77 Added.....796
852.212-70 Amended.....794
852.214-70 Amended.....794
852.214-71 Amended.....794, 796
852.214-72 Removed.....796
852.214-73 Amended.....794, 796
852.216-70 Amended.....794
(a) amended.....796
852.219-70 Added.....796
852.222-70 Amended.....794
852.228-70 Amended.....794
852.229-70 Amended.....794, 796
852.229-71 Amended.....794, 796
852.236-70 Heading, (a), (b), and (c) amended.....796
852.236-71 Amended.....794
852.236-72 Amended.....794, 796
852.236-73 Amended.....794, 797
852.236-74 Amended.....794
852.236-75 Amended.....794
852.236-76 Amended.....794
852.236-77 Amended.....794, 797
852.236-78 Amended.....794
852.236-79 Amended.....794
852.236-80 Amended.....794
852.236-81 Amended.....794, 797

48 CFR—Continued

50 FR Page

Chapter 8—Continued

852.236-82 Amended.....794. 797
852.236-83 Amended.....794, 797
852.236-84 Amended, and revised.....794, 797
852.236-85 Amended.....794
852.236-86 Amended.....794
852.236-87 Amended.....794
852.236-88 Amended.....794
Introductory text revised; (a) and (b) amended.....797
852.236-89 Added.....798
852.237-70 Amended.....794
852.237-71 Amended.....794
852.247-70 Amended.....794, 798
852.270-1 Amended.....794, 798
852.270-2 Amended.....794
852.270-3 Amended.....794, 798
852.270-4 Amended.....794, 798
852.271-70 Amended.....794
852.271-71 Amended.....794
852.271-72 Amended.....794
852.271-73 Amended.....794
852.271-74 Amended.....794
852.271-75 Amended.....794
853 Authority citation.....790
853.107 Corrected.....798
853.213 (a) amended.....798
853.236-1 Removed.....798
870 Authority citation.....790
870.112 (a) and footnote 8, (b), and (c)(3) amended.....798
871 Authority citation.....798
871.201-1 (a) corrected.....798
871.201-2 (a) corrected.....798
871.204 Heading corrected.....798
871.207 (a)(1)(i) and (b)(1) amended.....798

Chapter 9

901.103-70 (f) added.....12182
902.100 Amended.....12182
902.200 Revised.....12183
903.302-2—903.303 (Subpart 903.3) Heading revised.....12183
903.302-2 Redesignated as 903.303 and revised.....12183
903.303 Redesignated from 903.302-2 and revised.....12183
904.601 Revised.....12183
904.601-70 (b)(4) corrected.....12183
905.205 (Subpart 905.2) Heading revised.....12183
905.205 (a) corrected.....12183
905.303 (Subpart 905.3) Added.....12183
905.403 (b) redesignated as 905.403-70 and revised.....12183

48 CFR—Continued

50 FR Page

Chapter 9—Continued

905.403-70 Redesignated from 905.403 (b) and revised.....12183
906 Added.....12183
914 Heading revised.....12184
914.201-5 (a)(1) revised.....12184
(a)(1) revised; eff. 10-4-85.....35859
914.201-7 Removed.....12184
914.404-1 Added.....12184
914.502 (Subpart 914.5) Heading revised.....12184
914.502 Revised.....12184
915.105 (Subpart 915.1) Removed.....12184
915.200—915.215 (Subpart 915.2) Removed.....12184
915.307 (Subpart 915.3) Removed.....12184
915.406-5 (a)(4)(iii) and (v) revised.....12184
Revised; eff. 10-4-85.....35959
915.506-2 (e)(3) amended.....12184
915.804-2 Removed.....12184
915.804-8 (b) revised.....12184
915.804-70 Amended.....12184
915.1002—915.1003 (Subpart 915.10) Heading revised.....12185
915.1002 Redesignated as 915.1003.....12185
915.1003 Redesignated from 915.1002.....12185
919.201 Revised.....12185
924.202 Revised.....12185
928.101-1 Revised.....12185
943.170 (Subpart 943.1) Heading added.....12185
943.301 (Subpart 943.3) Added.....12185
950.7002 Amended.....12185
952.202-1 Clauses (a) and (d) revised.....12185
952.214 Revised.....12185
952.214-27 Revised.....12185
952.215-23 Revised.....12185
952.215-71 Added; eff. 10-4-85.....35961
952.215-72 Added; eff. 10-4-85.....35961
970.1508-1 (b)(1)(i) and (ii) revised.....12185
970.5204-24 Amended.....12185

Chapter 10

1033 Revised.....31844

Chapter 12

Chapter 12 Revised.....14799
1201 Revised.....14800
1202 Revised.....14802
1203 Revised.....14802

48 CFR—Continued

50 FR Page

Chapter 12—Continued

1204 Revised.................. 14803
1205 Revised.................. 14804
1207 Revised.................. 14804
1208 Added.................. 14805
1209 Revised.................. 14805
1210 Revised.................. 14805
1212 Revised.................. 14806
1213 Revised.................. 14806
1214 Revised.................. 14807
1215 Revised.................. 14807
1216 Revised.................. 14812
1217 Revised.................. 14813
1219 Revised.................. 14813
1222 Revised.................. 14815
1223 Revised.................. 14816
1224 Revised.................. 14817
1225 Revised.................. 14817
1227 Revised.................. 14817
1228 Revised.................. 14823
1229 Revised.................. 14824
1230 Revised.................. 14825
1231 Revised.................. 14825
1232 Revised.................. 14825
1233 Revised.................. 14825
1234 Added.................. 14826
1235 Revised.................. 14826
1236 Revised.................. 14826
1237 Revised.................. 14829
1242 Revised.................. 14830
1244 Revised.................. 14831
1245 Revised.................. 14831
1246 Revised.................. 14834
1249 Revised.................. 14834
1250 Revised.................. 14834
1252 Revised.................. 14834
1253 Revised.................. 14852

Chapter 13

1301.301 (b) revised; interim....... 19363
1302.1-1 Amended; interim......... 19363
1304 Added; interim.................. 19363
1305—1309 (Subchapter B) Heading revised; interim.......... 19363
1305 Part moved to Subchapter B.................. 19363
1306 Added; interim.................. 19363
1314 Heading revised; interim..... 19364
1314.401-1 Added; interim........... 19364
1315.307 (Subpart 1315.3) Removed; interim.................. 19364
1315.608 Added; interim.............. 19364
1319.202-2 Added; interim........... 19364
1319.705-5 (Subpart 1319.7) Added; interim.................. 19364
1331.205-32 Revised; interim...... 19364
1337.205 Revised; interim............ 19364
1353.204-2 Revised; interim........ 19364

48 CFR—Continued

50 FR Page

Chapter 13—Continued

1353.213 Added; interim.............. 19365
1353.232 Revised; interim........... 19365
1353 Appendix A amended (not published in CFR); interim..... 19366

Chapter 14

1414.407-8 Revised; interim........ 38658
1433 Heading revised; interim..... 38658
1433.003 Redesignated as 1433.203 and (a) amended; interim.................. 38658
1433.003-70 Redesignated as 1433.203-70; interim.................. 38658
1433.011 Redesignated as 1433.211 and amended; interim.................. 38658
1433.012 Redesignated as 1433.212; interim.................. 38658
1433.014 Redesignated as 1433.214; interim.................. 38658
1433.102—1433.106 (Subpart 1433.1) Added; interim.......... 38658
1433.203—1433.214 (Subpart 1433.2) Heading added; interim.................. 38658
1433.203 Redesignated as 1433.003 and (a) amended; interim.................. 38658
1433.203-70 Redesignated as 1433.003-70; interim.................. 38658
1433.211 Redesignated as 1433.011 and amended; interim.................. 38658
1433.212 Redesignated as 1433.012; interim.................. 38658
1433.214 Redesignated as 1433.014; interim.................. 38658
1452.233-2 Added; interim........... 38659

1986

48 CFR

51 FR Page

Chapter 7

702.170-3 (a) amended................. 20651
702.170-10 (a) amended............... 20651
(a) revised.................. 41106
705 Subchapter assignment; editorial note.................. 6004
Authority citation revised.......... 42844
705.202 Revised.................. 42845
706 Subchapter assignment; editorial note.................. 6004
Authority citation revised.......... 42844
706.201-70 (Subpart 706.2) Removed.................. 42845

48 CFR—Continued

	51 FR Page
Chapter 7—Continued	
706.501 (Subpart 706.5) Amended	11449
716 Revised	11450
725.703 Revised	34985
725.704 Amended	11450
731.109 Amended	20651
731.205-6 (b)(2) amended	20651
731.371 (a) amended	20651
731.770 (a) amended	20651
737.200—737.272 (Subpart 737.2) Heading revised	34985
752.200 Amended	11450
Corrected	12706
752.232-7 Added	11450
752.7002 Amended	11450
Correctly designated	12706
(d) amended	20651
Amended	34985
752.7004 Amended	20652
752.7016 Amended	34985
752.7028 Amended	11450
Correctly designated	12706
Chapter 7 Appendix D revised	15268
Appendixes B, C, F, G, and H amended	20652
Appendix D amended	42844
Chapter 8	
801.201-70 Removed; interim	23065
801.602 (a) introductory text amended; interim	23065
801.602-70 (a)(1) amended; interim	23066
801.602-72 (c) amended; interim	23066
802.100 Revised; interim	23066
805 Subchapter assignment; editorial note	6004
805.202 Revised; interim	23066
805.207 (a) amended; interim	23066
806 Added; interim	23066
808.001 (b) amended; interim	23068
808.404-1 Existing text designated as (a); (b) added	19350
808.404-3 Revised	19350
813.103 (Subpart 813.1) Added; interim	23068
814 Heading revised; interim	23068
814.103—814.104-70 (Subpart 814.1) Heading revised; interim	23068
814.103-1 Revised; interim	23068
814.201 (f)(3) revised; interim	23068
814.203-1 (b) revised; interim	23068
814.203-2 Removed; interim	23068
814.205-1 Amended; interim	23068
814.205-2 Amended; interim	23068

48 CFR—Continued

	51 FR Page
Chapter 8—Continued	
814.404-1 Existing text designated as (a); (b) added; interim	23068
814.407-1 (c) and (d) removed; interim	23068
814.407-8 Removed; interim	23068
815.103—815.104 (Subpart 815.1) Removed; interim	23069
815.200—815.215 (Subpart 815.2) Removed; interim	23069
815.502—815.506-1 (Subpart 815.5) Added	6005
815.805-5 (c)(2) revised; interim	23069
815.7001—815.7002 (Subpart 815.70) Added; interim	23069
819.202-70 (m) amended; interim	23070
833 Revised; interim	23070
833.212 (b) (2) through (5) correctly revised	44179
836.302—836.371 (Subpart 836.3) Heading amended; interim	23072
842.000 Amended; interim	23072
846.403 (b) amended	37027
846.408-70 (a) amended; (b) and (c) redesignated as (c) and (d); new (c) amended; new (b) added	37027
846.408-71 (a) amended	37028
852.233-2 Added; interim	23072
852.236-88 Introductory text, (a) introductory text, and (b) introductory text revised; (a) text amended; interim	23073
Chapter 9	
905 Subchapter assignment; editorial note	6004
906 Subchapter assignment; editorial note	6004
914.407-8 Removed; eff. 11-3-86	31336
914.407-70 Removed; eff. 11-3-86	31336
933 Revised; eff. 11-3-86	31336
952.233-2 Added; eff. 11-3-86	31339
970 Revised	43926
970.3102-17 (c) added	43926
970.4406 Revised; eff. 11-3-86	31339
970.5204-13 (e)(35) added	43926
970.5204-14 (e)(33) added	43926
Chapter 10	
1033.270 Corrected	6741

48 CFR—Continued

	51 FR Page
Chapter 13	
1301.101 Amended	15329
1301.104-3 (b) Revised	15329
1301.201-1 Revised	15329
1301.301 (b) revision confirmed	1377
(c) amended	15329
1301.402 Amended	15329
1301.501 Amended	15329
1301.601-70 Amended	15329
1301.601-71 Amended	15330
1302.1-1 Amendment confirmed	1377
Amended	15330
1304 Addition confirmed	1377
1305—1309 (Subchapter B) Heading revision confirmed	1377
1306 Addition confirmed	1377
1306.303 Added	15330
1306.303-1 Added	15330
1309.106—1309.106-70 (Subpart 1309.1) Added	15330
1314 Heading revision confirmed	1377
1314.401-1 Addition confirmed	1377
1314.407-8 Removed	15331
1315.307 (Subpart 1315.3) Removal confirmed	1377
1315.608 Addition confirmed	1377
1319.202-2 Addition confirmed	1377
1319.705-5 (Subpart 1319.7) Addition confirmed	1377
1319.7001—1319.7003 (Subpart 1319.70) Added	15331
1331.205-32 Revision confirmed	1377
1333 Heading revised	15331
1333.102—1333.106 (Subpart 1333.1) Added	15331
1333.209—1333.213 (Subpart 1333.2) Added	15332
1337.205 Revision confirmed	1377
1349 Added	15332
1352.219-1—1352.233-2 (Subpart 1352.2) Added	15333
1353.204-2 Revision confirmed	1377
1353.213 Addition confirmed	1377
1353.232 Revision confirmed	1377
1353 Appendix A amendment confirmed (not published in CFR)	1377
Chapter 14	
1401.301 (a) and (b) amended	41965
1401.303 Heading revised	41965
1405 Added	41965
1406 Added	41965

48 CFR—Continued

	51 FR Page
Chapter 14—Continued	
1414 Heading revised	41965
1414.404 Added	41965
1414.404-1 Added	41965
1414.407-8 Revised; final	8830
1415.608 Added	41965
1415.902 (d) revised	41965
1415.905 (b) amended	41965
1415.905-1 (a) introductory text, (3), and (5) amended; (a) (4) and (5) redesignated as (a) (5) and (4)	41965
1415.905-70 (b)(1) amended	41965
1419.705-6 Added	41966
1420.102 Amended	41966
1428.301 Amended	41966
1433 Heading revised; final	8830
1433.003 Redesignated as 1433.203 and (a) amended; final	8830
1433.003-70 Redesignated as 1433.203-70; final	8830
1433.011 Redesignated as 1433.211 and amended; final	8830
1433.012 Redesignated as 1433.212; final	8830
1433.014 Redesignated as 1433.214; final	8830
1433.102—1433.106 (Subpart 1433.1) Added; final	8830
1433.203—1433.214 (Subpart 1433.2) Heading added; final	8830
1433.203 Redesignated from 1433.003 and (a) amended; final	8830
1433.203-70 Redesignated from 1433.003-70; final	8830
1433.211 Redesignated from 1433.011 and amended; final	8830
1433.212 Redesignated from 1433.012; final	8830
1433.214 Redesignated from 1433.014; final	8830
1437.7001 Amended	41966
1437.7002 (a) amended	41966
1452.228-70 Heading revised; clause amended	41966
1452.233-2 Added; final	8831
1453.219-73 Added	41966
1453.303-DI-1920 Revised	41966
1453.303-70 Revised	41968
1453.303-71 Added	41969

1987

48 CFR

52 FR Page

Chapter 7
Appendix J added....................2354
Appendix D amended....................4145
Appendix G amended....................4146
Appendix F amended.................... 6160
Appendixes D and J amended....11075
Appendix D amended....................38098
Appendix J amended....................38100
701.105 Revised.................... 21058
702.170-13 (d) amended.................... 38097
705.002 Amended.................... 21058
706.101-70 (Subpart 706.1) Removed.................... 6158
709.402 Revised.................... 21058
715.504 (a) amended.................... 21058
715.506 Amended.................... 21058
715.613 Revised.................... 6158
715.613-70 Revised....................6158
715.613-71 Revised....................6159
719.270 (d) amended.................... 21058
719.271-2 (b) (4) and (8) amended....................21058
719.271-6 (a) introductory text amended; (a)(3) revised.................... 21058
725.706 (a) amended.................... 4144
728.305 (a)(2) list revised.................... 4144
731.205-6 (b)(2) amended.................... 21058
731.371 (a) amended.................... 21058
732.402 Added....................38097
732.406-70 Revised....................4145
732.406-70-1 Revised....................4145
732.406-70-2 Revised....................4145
732.406-70-3 Revised....................4145
732.406-70-4 Revised....................4145
732.406-70-5 Revised....................4145
733 Heading revised....................4145
736.603 Amended.................... 21059
750.7110-2 Amended....................38097
752.202 (d) amended.................... 4145
Redesignated as 752.202-1 and (d) amended....................38098
752.202-1 Redesignated from 752.202 and (d) amended.................... 38098
752.219-8 Amended....................21059
752.7026 Revised.................... 38098

Chapter 8
801 Nomenclature change.................... 28559
801.301 (c) added....................28559
801.404 Amended.................... 49016
801.602 Revised.................... 24010

48 CFR—Continued

52 FR Page

Chapter 8—Continued
801.602-70 (a)(4)(ii) removed; (a)(4) (iii) through (xi) redesignated as (a)(4) (ii) through (x); (b) and (d) revised; (i) added.................... 28559
(a)(6) revised; (a)(7) and (g) amended....................49016
801.602-71 (b) (1), (2), and (3) amended; (a) and (b)(5) revised....................28559
(b) (2) and (4) amended....................49017
801.602-72 (a) amended; (d) revised.................... 28559
(b) amended.................... 49017
801.603-1 Added.................... 24010
801.603-3 Removed.................... 24010
801.603-4 Removed.................... 24010
801.603-70 (c) removed....................24010
801.670-1 Removed; new 801.670-1 redesignated from 801.670-6.................... 24010
801.670-2 Removed; new 801.670-2 redesignated from 801.670-7.................... 24010
801.670-3 Removed; new 801.670-3 redesignated from 801.670-12.................... 24010
801.670-4 Removed; new 801.670-4 redesignated from 801.670-13; (a) removed and (b), (c), and (d) redesignated as (a), (b), and (c).................... 24010
801.670-5 Removed; new 801.670-5 redesignated from 801.670-14.................... 24010
801.670-6 Redesignated as 801.670-1; new 801.670-6 redesignated from 801.670-15.... 24010
801.670-7 Redesignated as 801.670-2.................... 24010
801.670-8 Removed....................24010
801.670-9 Removed....................24010
801.670-10 Removed....................24010
801.670-11 Removed....................24010
801.670-12 Redesignated as 801.670-3.................... 24010
801.670-13 Redesignated as 801.670-4.................... 24010
801.670-14 Redesignated as 801.670-5.................... 24010
801.670-15 Redesignated as 801.670-6.................... 24010
801.690 Added....................24010
801.690-1 Added.................... 24010
801.690-2 Added.................... 24011

48 CFR—Continued

52 FR Page

Chapter 8—Continued

801.690-3 Added.......24011
801.690-4 Added.......24011
801.690-5 Added.......24012
801.690-6 Added.......24012
801.690-7 Added.......24012
801.690-8 Added.......24012
801.690-9 Heading added.......24012
802.100 Nomenclature change.......28559
 Revised.......24013
806.302-5 (a) and (b) amended.......28560
808.304-1 (b) introductory text amended.......28560
808.307-2 Revised.......28560
810.001 Added.......281
810.004 Added.......281
810.004-70—810.004-72 Added.......282
810.005 Removed.......282
813.103 (a) amended.......28560
813.506-70 Revised.......28560
814.201 (d)(1) table and (2) table revised.......49017
814.202-4 Amended.......49017
814.404-1 (b) amended.......28560
815 Nomenclature change.......28559, 42439
815.805-5 (a) and (b) amended.......42439
815.7001 (c) introductory text amended; (c)(5) revised.......49017
819 Nomenclature change.......37317
819.602-3 (Subpart 819.6) Added.......46083
819.806-2 Revised.......37317
819.806-3 Added.......37317
819.806-4 Revised.......37317
819.807-70 Heading revised; text amended.......46083
819.7004 Amended.......37317
 Heading revised; text amended.......46083
825.108 Revised.......32012
825.202-70 (c) amended.......32012
825.203 Amended.......32012
833 Nomenclature change.......28559
833.103 (d) revised.......28560
 (b)(1) revised; (f)(2) amended.......49017
833.104 (c) amended.......28560
833.106 Revised.......28561
 Corrected.......32013
833.211 (c) and (d) amended.......28561
836 Nomenclature change.......49017
836.202 Added.......282
 (b) corrected.......1276
836.302—836.371 (Subpart 836.3) Heading revised.......282
836.606-72 Revised.......282

48 CFR—Continued

52 FR Page

Chapter 8—Continued

842.705 (b) nomenclature change.......49017
849 Nomenclature change.......42439
849.107 Amended.......42440
852.233-2 Footnote ** revised.......28561
852.233-70 Added.......28561
 Amended.......49017
852.236-88 Introductory text, (a) clause and (b) clause amended.......28561
 (a) and (b) corrected.......32013
 (b) amended.......49017
852.236-90 Added.......282

Chapter 9

Authority citations revised.......38422
901.102 Revised.......38422
902.100 Redesignated as 902.101 and amended.......38422
902.101 Redesignated from 902.100 and amended.......38422
904.601-70 (b)(3)(ii) revised.......38422
904.601-71 Added.......28717
912.300—912.304 (Subpart 912.3) Revised.......38422
913.505-1 (Subpart 913.5) Revised.......38423
913.505-2 Removed.......38423
915.612 (a) revised.......38423
915.613 Revised.......38423
915.807 Added.......38423
915.808 (a) added.......38424
917.504 Revised.......38424
917.505-70 Heading and (a) revised.......38424
917.505-71 (b) and (c) revised; (d) and (e) added.......38424
919.501 Revised.......38425
919.602-1 (Subpart 919.6) Added.......38425
919.705-2 Added.......38425
919.705-5 (a)(5) added.......38425
952 Table of contents corrected.......38425
952.204-2 Amended.......38425
952.209-72 Amended.......38425
952.212-70 Revised.......38425
952.212-71 Revised.......38426
952.212-72 Added.......28717
952.219-9 Amended.......38426
970.0404-4 (a)(1) revised; (a)(2) removed.......38426
970.0406 Added.......28717
970.1901 (i) added.......38426
970.3101-6 (a) (3) revised; (a) (10), (11), and (12) added.......1607

48 CFR—Continued

52 FR Page

Chapter 9—Continued
970.3102-7 Revised....1607
970.3102-17 (a) revised....1608
970.3102-19 Added....1608
970.3102-20 Added....1609
970.3102-21 Added....1610
970.3103 Correctly designated....1610
970.5204-13 (e) (1), (8), (11), (12) and (27) revised; (e) (33) and (34) added....1610
Amended....38426
970.5204-14 (e) (1), (6), (9), (10), and (24) revised; (e) (31) and (32) added....1610
970.5204-22 Note A revised....38426
970.5204-33 Revised....38426
971.103 (a) (3) and (4) added....38427

Chapter 10
1033 Authority citation revised....17298

Chapter 12
Revised; interim....44525

Chapter 13
1317.7001 (Subpart 1317.70) Added....3807
1352.217-90—1352.217-112 Added....3808

1988

(Regulations published from January 1, 1988 through December 31, 1988)

48 CFR

53 FR Page

Chapter 7
701.105 Revised....4979
Revised (OMB number)....50630
701.601 Revised....4980
701.602-3 Added....6829
702.170-10 Revised....4980
702.170-13 (c)(4) amended....50630
728.302 Removed....50630
728.305 Redesignated as 728.305-70 and heading revised....50630
728.305-70 Redesignated from 728.305 and heading revised....50630
728.307-2 Revised....50630
728.309 Added....50630
728.313 Added....50630
728.370 Removed....50631
731.205-6 (a)(2) and (3)(i) revised....50631
731.371 (c)(1) revised....50631
731.772 (c)(1) revised....50631
733 Revised....4980

48 CFR—Continued

53 FR Page

Chapter 7—Continued
733.7002 (d) amended....13410
(b) removed; (c) and (d) redesignated as (b) and (c) and amended....50631
733.7003 (b) amended....13410
(d) amended....50631
733.7004 (b) amended....50631
733.7005 (a) and (b) amended....50631
733.7007 (a) introductory text and (b) amended....50631
733.7008 (a) and (b) amended....50631
736.603 Amended....50631
742.770 Amended....50631
750.7000 (Subpart 750.70) Removed....6829
750.7107 (d) revised....4982
752.228-3 Added....50631
752.228-7 Added....50632
752.228-9 Added....50632
752.228-70 Removed....50631
752.7001 Amended....50632
752.7003 Revised....6829
752.7014 Revised....50632
752.7028 Amended....50632
752.7031 (b) and (c) amended....50632
753 Revised....50632
Chapter 7 Appendix B removed....50633
Appendixes D and J amended....50633

Chapter 8
807 Added....43210
810.004-70 (b) and (e) revised....7755
836.202 (b) redesignated as (c); new (b) added; new (c) amended....7756
(b) correctly revised....9631
836.204 Added....1631
836.602-2 (a) and (b) revised; nomenclature change; interim....1631
836.602-3 Nomenclature change; interim....1631
836.602-4 Nomenclature change....1631
836.602-5 Nomenclature change....1631
852.207-70 Added....43211
Correctly designated and corrected....46872
852.207-71 Added....43212
Correctly designated and (a) and (b) corrected....46872
852.207-72 Added....43212
Correctly designated and corrected....46872
Correctly designated....48615

48 CFR—Continued

53 FR Page

Chapter 8—Continued

852.210-77 Introductory text amended....7756
852.236-72 Amended; interim....1631
Correctly designated....2669
852.236-75 Amended; interim....1631
Correctly designated....2669
852.236-81 Amended; interim....1632
852.236-82 Amended; interim....1632
852.236-83 Amended; interim....1632
852.236-84 Introductory text added; interim....1632
852.236-88 (b)amended; interim....1632
852.236-90 Amended....7756
852.236-91 Added; interim....1632

Chapter 9

927 Authority citation revised....51278
927.370 Added....51278
970 Authority citation revised....21648
970.0304 (Subpart 970.03) Removed....24231
970.0407 Amended....24231
970.0811 Removed....24231
970.0870—970.0872 Removed....24231
970.0902 Removed....24231
970.0905 (a) designation removed and amended; (b) removed....24231
970.1508-1 (a) designation removed; (b) and (c) removed....24231
970.1901 (a) through (g) removed; (h) and (i) redesignated as (a) and (b)....24231
970.2001 (Subpart 970.20) Removed....24231
970.2202—970.2204 Removed....24231
970.2206 (a) removed; (b) designation removed....24231
970.2208 Amended....24231
970.2210 (a) designation removed and amended; (b) removed....24231
970.2213 Removed....24231
970.2214 Removed....24231
970.2501 (Subpart 970.25) Removed....24231
970.2800 Removed....24231
970.2801 Removed....24231
970.2803—970.2805 Removed....24231
970.2903 (a) designation removed and amended; (b) removed....24231
970.3101-4 (a) designation removed and amended; (b) removed....24231
970.3102-7 Revised....21648

48 CFR—Continued

53 FR Page

Chapter 9—Continued

970.3102-15 Heading, (a), and (b) heading amended....24231
970.3103 Existing text designated as (a); new (b) added....21648
970.3600 Removed....24231
970.3601 Removed; new 970.3601 redesignated from 970.3606....24231
970.3602—970.3605 Removed....24231
970.3606 Redesignated as 970.3601....24231
970.3607 Removed....24231
970.3608 Removed....24231
970.4401—970.4409 (Subpart 970.44) Removed....24231
970.4601 (Subpart 970.46) Removed....24231
970.4901 Heading amended; (a) designation removed; (b) removed....24231
970.5204-13 Heading revised; text amended....21648
970.5204-14 Amended....21649
970.5204-17 Added....21649
Corrected....24830
970.5204-22 Revised....24231
970.7101—970.7110 (Subpart 970.71) Added....24232

Chapter 10

1033.103 (Subpart 1033.1) Added....12771

Chapter 12

1201.403 Amended....28397
1201.602 Heading revised....28397
1201.670 Removed....28397
1202.170 (d) revised....28398
1204.602 (c) amended....28398
1204.804-5 Revised....28398
1205.303 (Subpart 1205.3) Added....28398
1205.303 Corrected....34301
1205.402-70 Revised....28398
1206.102 (b) amended....28399
1206.302.1 Amended....28399
1206.304 (a)(1)(ii), (b), and (d) revised....28399
1207.305 (a) revised....28399
1213.203-1 Revised....28399
1213.505-2 Amended....28399
1214.406-3 Amended....28399
1214.470 Amended....28399
1214.501 (Subpart 1214.5) Removed....28399
1215.612-70 Removed....28399
1215.807-70 (e) revised....28400

48 CFR—Continued

53 FR Page

Chapter 12—Continued

1215.905-70 (b)(5)(i) table and (ii) table amended.......28400
1215.7000 Amended.......28400
1216.170 Removed.......28400
1216.7001—1216.7002 (Subpart 1216.70) Removed.......28400
1217.7001 Amended.......28400
1219.201 Amended.......28400
1222.7002 (a) amended; (b) revised.......28400
1223.7001 (b) amended.......28400
1227.409 (a), (b), and (c) amended.......28400
1228.306-7001 Correctly designated.......28400
1229.7002 Revised.......28400
1229.7003 Removed.......28400
1232.7001 (Subpart 1232.70) Removed.......28400
1233.104 (c) amended.......28400
1236.603 Amended.......28400
1242.705-2 Revised.......28400
1242.708 Amended.......28400
1243 Added.......28400
1245.101 Revised.......28401
1245.505-70 Revised.......28401
1246 Authority citation revised.......30177
1246.701—1246.772 (Subpart 1246.7) Revised.......30177
1252.207-70 Revised.......28401
Corrected.......31007
1252.215-72 Amended.......28402
Corrected.......31007
1252.222-70 Amended.......28402
Corrected.......31007
1252.222-75 Amended.......28402
Corrected.......31007
1252.245-70 Amended.......28402
Corrected.......31007
1253.215-70 (a) revised.......28402
1253.222-70 Heading revised.......28402
1253.227 Redesignated as 1253.227-70; new 1253.227 added.......28402
1253.227-70 Redesignated from 1253.227.......28402
1253.246-70 Heading revised.......28402

1989

48 CFR

54 FR Page

Chapter 7

701.105 (a) amended.......16122
702.170-13 (d) removed.......37334

48 CFR—Continued

54 FR Page

Chapter 7—Continued

704.404 Redesignated from 704.405.......16122
704.405 Redesignated as 704.404.......16122
705.202 (b)(1) revised.......28069
706.302-70 (b)(4) added.......28069
(c)(3) added.......46389
706.501 Amended.......46389
709.503 (Subpart 709.5) Added.......16122
714.406-3 Amended.......46389
715.605-70 Revised.......46389
715.613-70 (a) through (c) redesignated as (b) through (d); new (a) added.......28069
715.613-71 (a) through (d) redesignated as (b) through (e); new (a) added.......28069
716.303 Added.......46390
725.270 (Subpart 725.2) Removed.......16122
728.305-70 (a) introductory text amended; (a)(2) revised.......16122
731.205-6 (a)(3)(i) revised.......46390
731.371 (a) and (c)(1) revised.......46390
731.772 (c)(1) revised.......46390
732.406-70-2 (c) amended.......46390
732.406-70-3 (a), (b) introductory text, (7), (c) introductory text, (d), (e)(1) (ii) and (iii), and (2) introductory text amended.......46391
732.406-70-5 Amended.......46391
733.7001—733.7008 (Subpart 733.70) Revised.......20597
734.003 Revised.......37334
736.602-2 Revised.......46391
752.225-9 Amended.......16122
752.228-3 Existing text designated as (a), (b) and (c); new (a) and (b) revised.......16122
752.228-7 Amended.......16122
752.232-70 Amended.......46391
752.7004 Clause title and (g) revised.......16123
752.7013 Revised.......46391
752.7018 Amended.......46391
752.7019 Revised.......46391
752.7026 (a) amended.......16123, 37334
Revised.......46392
752.7031 (c) amended.......28069
(c) and (d) removed; new (c) added.......37335
Revised.......46392

Chapter 8

Chapter 8 Heading revised.......24173

48 CFR—Continued

54 FR Page

Chapter 8—Continued
Nomenclature changes.......... 40062
801 Part heading revised.......... 31961
801.000 Amended.......... 31961
801.102 Amended.......... 31961
801.103 (a) amended.......... 40062
801.104-1 Amended.......... 31961
(a) amended.......... 40062
801.201 Amended.......... 31961
801.201-1 Amended.......... 31961
801.301—801.304 (Subpart 801.3) Heading revised.......... 40062
801.301 (a) and (c) amended.......... 31962
801.301-70 (b)(2) amended.......... 31962
(b)(2) amended.......... 40062
801.303 Amended.......... 31962
801.304 Amended.......... 31962
Heading amended.......... 40062
801.403 Revised.......... 31962
801.404 Amended.......... 31962
801.470 (b) amended.......... 31962
(a) amended.......... 40062
801.602 (a) amended.......... 31962
801.602-2 (a) and (b) revised.......... 31962
801.602-3 Added.......... 31962
801.602-70 (a) introductory text, (1), (2), (3), (4) (vi) and (vii), (b)(2), (d), and (h)(1) and (2)(i) revised; (j) added.......... 31963
801.602-71 (b)(4) removed; (b) (5), (6), and (7) redesignated as (b) (4), (5), and (6); (b) heading, (1), (3), new (5), new (6), (c) (1) and (2) amended; (c) heading and (d) revised; (e) added.......... 31963
(b)(3) and (c) introductory text amended.......... 40062
801.602-72 (d) introductory text revised; (e) added.......... 31964
(d)(4), (5), and (6)(iv) amended.......... 40062
801.603-70 (b) amended.......... 40062
801.603-71 (b), (c), and (d) amended.......... 31964
(a), (d), and (e) amended.......... 40062
801.603-72 Removed.......... 31964
801.670 Amended.......... 31964
801.670-2 (a)(3) amended.......... 31964
(b) amended.......... 40062
801.670-3 (a) amended.......... 31964
801.670-4 Heading, introductory text, (a) (1) and (2), and (b)(1) revised.......... 31964
801.670-5 (a) introductory text, (2), (6), and (9), and (b) amended.......... 31964

48 CFR—Continued

54 FR Page

Chapter 8—Continued
(a)(2) amended.......... 40062
801.670-6 Amended.......... 31964, 40062
801.680 (d) amended.......... 31964
801.690-1 (h) and (j) revised.......... 31964
(d) and (e) amended.......... 40062
801.690-2 (a) amended.......... 31964
801.690-3 (a), (c) introductory text, and (1), and (d) amended; (b) revised.......... 31964
(d) amended.......... 40062
801.690-4 (c)(1)(i) and (3)(i)(A) and (f) revised; (c)(2)(i)(C) and (3)(i)(D) undesignated paragraphs and (g) added.......... 31964
801.690-5 (a) amended.......... 31965
801.690-6 Revised.......... 31965
801.690-7 (a) amended; (b) and (d) revised.......... 31965
801.690-8 Revised.......... 31965
802.100 (a) and (b) amended.......... 40062
803.101-3 Heading amended.......... 40062
803.104 Added.......... 47086
803.104-5 Added.......... 47086
803.104-9 Added.......... 47087
803.104-11 Added.......... 47087
803.104-12 Added.......... 47087
805.207 (a) amended.......... 40063
806.302-5 (c) introductory text and (3)(ii) amended.......... 40063
806.304 (a)(1)(i) amended.......... 40063
806.401 Amended.......... 40063
806.501 (a) amended.......... 40063
807.302 (a) amended.......... 40063
807.304-72 (d) (i) and (ii) redesignated as (d) (1) and (2); (b), new (d)(2) and (e) amended.......... 40063
808.001 (a)(6) amended.......... 40063
808.307-70 Amended.......... 40063
808.404-1 (a) and (b) amended.......... 40063
808.405-5 Introductory text amended.......... 40063
809.106-1 (b) and (c) amended.......... 30044
(a) amended.......... 40063
809.206 Nomenclature change; (b) introductory text and (3) amended.......... 30044
(a) and (b) amended.......... 40063
809.270 Nomenclature change.......... 30044
809.404 Nomenclature change.......... 30044
809.405 Nomenclature change.......... 30044
809.702 Amended.......... 40063
810.006 Nomenclature change; (c)(3) and (8) amended; (e)(1) revised.......... 30044
(c) (2), (9), and (11) amended.......... 40063

48 CFR—Continued

Chapter 8—Continued	54 FR Page
810.007 Nomenclature change; (a) (1) and (2) amended	30044
(a)(1) amended	40063
810.011 Amended	40063
812.302 (c)(8) amended	40063
813.103 (a) and (b) amended	40063
814.103-1 Amended	40063
814.201 (b) revised; (c) and (f)(3) amended	30044
814.304-4 Amended	40063
814.404-70 Amended	40063
814.406-3 Nomenclature change	30044
814.406-4 Nomenclature change	30044
814.407-1 Removed	30044
(a) amended	40063
814.407-71 (a) and (b) amended	30044
(a) amended	40063
814.408 (a) and (b) amended	30045
(b) amended	40063
815.502 Amended	40063
815.506 Heading amended	40063
(a) amended	42508
815.506-1 (a) amended	40063
815.607 (Subpart 815.6) Added	42508
Correctly revised	45736
815.804-2 Removed	42508
815.804-70 Amended	40063
815.805-5 (a) amended	40063
Removed	42508
815.901 (Subpart 815.9) Removed	42508
815.7001 (c)(4), (d)(1), (4), and (e) amended	40064
(d)(2) removed; (d) (3) through (8), and (e) and (f) redesignated as (d) (2) through (7) and (f) and (g); (c) introductory text and (5), (d) introductory text and (1) revised; (e) added	42508
815.7002 (b) amended	40064
816.102 (c) amended; (b) revised	30045
816.603 Amended	40064
816.7001 Nomenclature change	30044
(b)(1)(ii) amended	40064
817.102-1 Revised	980
817.202 Nomenclature change; (a) designation and (b) removed	980
817.402 Nomenclature change	980
Amended	40064

48 CFR—Continued

Chapter 8—Continued	54 FR Page
819.000 Amended	40064
819.201 (a) revised; (b) and (d) amended	40064
819.202-5 Amended	40064
819.602-3 (a), (c), and (d) amended	40064
819.801 (b) amended	40064
819.807-70 Amended	40064
819.7002 (a) amended	40064
819.7004 Amended	40064
820.104 Amended	40064
822.478 (a), (b), and (c) amended	40064
824.102 Amended	40064
824.202 Amended	40064
825.102-70 (b) amended	40064
825.202-70 (b) amended	40064
825.203 Amended	40064
825.902 Amended	40064
828.106-6 Added	30045
828.203—828.203-2 (Subpart 828.2) Removed	24173
828.307-1 Added	24173
828.7101 (a) and (b) amended	24173
Nomenclature change	30044
829.202-70 (a)(2) amended	24173
829.270 (a) amended	24173
829.270-1 (a), (b), and (e) amended	24173
829.270-2 Heading revised	24173
Heading revised; (b) amended	40064
829.302 (Subpart 829.3) Removed	24173
831.7001-1 (b) introductory text and (2) amended	40064
831.7001-3 (a) (1) and (8) amended	40064
831.7001-4 (b)(1) and (c) amended	40064
831.7001-6 (b)(5) amended	40064
831.7001-7 Amended	40064
832.805-70 (b) amended	40065
833.102 Amended	40065
833.103 Heading, (b)(7) introductory text and (i) amended	40065
833.104 (a), (b), and (c) amended	40065
833.105 (a) amended	40065
833.211 (d) amended	40065
836.202 (c) amended	40065
836.208 Amended	40065
836.602-2 (a) amended	40065
836.606-72 Amended	40065
837.200 Amended	40065

48 CFR—Continued

54 FR Page

Chapter 8—Continued

837.204 (c) and (g) amended........40065
837.205 (a)(3), (b), (c) (2) and (3) amended........40065
837.270 (b) and (c) amended........40065
837.271-1 (b) amended........40065
837.7003 (e) amended........40065
837.7004 (b) and (e) amended........40065
842.705 (b) amended........40065
846.408-70 (a)(1) amended........40065
846.470 (a) amended........40065
847.304 Heading amended........40065
847.304-1 Heading amended........40065
849.107 Amended........40065
852.203-70 (a) and (b) amended........40065
852.210-70 (c) amended........40065
852.210-73 Amended........40065
852.210-76 Amended........30045
852.216-70 (e) added........30045
852.219-70 Amended........40065
852.233-2 Nomenclature change........30044
Amended........40065
852.236-76 Amended........40066
852.236-82 Amended........40066
852.236-83 (a)(2)(ii) and (6)(iii) amended........40066
852.236-89 (b), (c), and (d) amended........40066
853.000 Amended........40066
853.107 Amended........40066
870—871 (Subchapter I) Heading amended........40066
870.111-5 (a) and (b) amended........40066
870.112 Nomenclature change........30044
(b) amended........30045, 40066
870.113 (b)(4) amended........40066
870.114-3 Introductory text amended........40066
870.114-4 Amended........40066
871.101 Amended........40066
871.201-3 Amended........40066
871.206 Amended........40066

Chapter 9

901.602-3 Added........27645
901.603-71 Removed; new 901.603-71 redesignated from 901.603-72........27645
901.603-72 Redesignated as 901.603-71; new 901.603-72 redesignated from 901.603-73........27645
901.603-73 Redesignated as 901.603-72........27645
904.404 (d)(3) revised........27646
906.303-70 Revised........27646
908.7121 Revised........27646

48 CFR—Continued

54 FR Page

Chapter 9—Continued

913.505-3 Added........27646
916.301-3 (c) amended........27647
916.405 (e) introductory text revised........48614
932.111 Removed........9808
932.908—932.970 (Subpart 932.9) Added........9808
932.7100—937.7107-2 (Subpart 932.71) Removed........9808
935.014 Removed........27647
942.1004 Revised........27647
945.101 Revised........27647
945.505-5 Revised........27647
945.505-14 (b) revised; table amended........27647
945.607-2 Revised........27648
945.608-6 Added........27648
951.7000—951.7002 (Subpart 951.70) Added........17736
952.232 Removed........9809
952.232-1 Removed........9809
952.232-2 Removed........9809
952.232-3 Removed........9809
952.232-4 Removed........9809
952.232-5 Removed........9809
952.232-6 Removed........9809
952.232-7 Removed........9809
952.232-8 Removed........9809
952.232-10 Removed........9809
952.232-70 Removed........9809
952.232-71 Removed........9809
952.232-72 Removed........9809
952.232-73 Removed........9809
952.251-70 Added........17737
Corrected........26045
970.1509-8 (f) and (g) added........48614
970.3102-16 (c)(4) amended........27649
970.5204-13 (c), (d)(8) introductory text and (i) amended........27649
970.5204-16 Amended........48614
970.5204-22 Corrected........1288
970.5204-27 (b) amended........27649
970.5204-53 Added........17738
970.5204-54 Added........48614
970.7101 (c) corrected........1288
970.7103 Introductory text and (c)(3)(vii) corrected........1288
970.7104-30 Correctly designated........1288

Chapter 14

1428.306-70 (c)(1) revised........10989
1452.228-71 Revised........10989

1990

(Regulations published from January 1, 1990 through October 1, 1990)

48 CFR

55 FR Page

Chapter 7
701.105 (b) amended........................6802
Revised; eff. 10-31-90 39976
701.372 (a) revised............................6802
701.376-4 Amended..........................6802
701.470 (a)(2) amended...................6802
701.601 (b)(4) amended...................6802
702.170-13 (b) amended..................6802
705.202 (c) added; interim..............8469
Regulation at 55 FR 8469 confirmed; (c) republished............39154
705.207 Added; interim...................8469
Revised...39154
706.302-5 Added; interim...............8469
Regulation at 55 FR 8469 confirmed; republished..................39154
706.302-71 Added; interim.............8469
Revised...39154
706.501 Amended............................6802
715.613-70 (d)(2)(iv) and (4) amended...6802
715.613-71 (c)(1) introductory text, (d), (e) introductory text, (1), and (3) amended; (f) correctly designated 6802
719.272 Added; interim...................8470
Regulation at 55 FR 8470 confirmed; republished..................39154
726 Added; interim...........................8470
Revised...39154
728.105-1 (b) amended...................6802
734 Revised; eff. 10-31-90 39976
735 Revised; eff. 10-31-90 39976
750.7109-1 Amended........................6802
750.7110-1 Amended........................6802
750.7110-2 Amended........................6802
750.7110-3 Amended........................6802

48 CFR—Continued

55 FR Page

Chapter 7—Continued
752.202-1 Amended..........................6803
752.226-1 Added; interim...............8471
Revised...39156
752.226-2 Added; interim...............8471
Revised...39156
752.7002 Revised.............................6803
752.7014 Revised.............................6805
752.7020 Removed; eff. 10-31-90 39977
752.7032 Added...............................6805
Chapter 7 Appendixes G and H amended...6805

Chapter 8
801.602-70 (b)(1) revised........ 31391
803.104 Suspended; eff. to 12-1-90...25848
803.104-5 Suspended; eff. to 12-1-90..25848
803.104-9 Suspended; eff. to 12-1-90..25848
803.104-11 Suspended; eff. to 12-1-90.......................................25848
803.104-12 Suspended; eff. to 12-1-90.......................................25848
871.101 Amended...........................31600
871.102 (c) revised.........................31600

Chapter 9
917.7301-1 (c)(1) revised..............33314
935.016 Added.................................33314
935.016-1 Added.............................33314
935.016-2 Added.............................33314
935.016-3 Added 33315
935.016-4 Added.............................33315
935.016-5 Added.............................33316
935.016-6 Added.............................33316
935.016-7 Added.............................33316
935.016-8 Added.............................33317
935.016-9 Added.............................33318
970.3102-2 (i)(2)(i) amended......... 5462
970.5204-4 Added........................... 5462
970.5204-16 Amended 31053

○